As confidentially submitted to the Securities and Exchange Commission on September 2, 2021. This Amendment No. 1 to the draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

Journey Medical Corporation

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**2834**	**47-1879539**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

9237 E Via de Ventura Blvd., Suite 105
Scottsdale, AZ 85258
480-434-6670

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Claude Maraoui
9237 E Via de Ventura Blvd., Suite 105
Scottsdale, AZ 85258
480-434-6670

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies to:

Mark F. McElreath, Esq.	**Stephen E. Older, Esq.**
Alston & Bird LLP	**Rakesh Gopalan, Esq.**
90 Park Avenue	**McGuireWoods LLP**
New York, NY 10016	**1251 Avenue of the Americas, 20th Floor**
(212) 210-9400	**New York, New York 10020**
	(212) 548-2100

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

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

Large accelerated filer ☐ 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 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title Of Each Class Of Securities To Be Registered	**Proposed Maximum Aggregate Offering Price[(1)(2)]**	**Amount of Registration Fee[(3)]**
Common Stock, par value $0.0001 per share	$ 40,000,000	$ 4,364

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

(2) Includes the aggregate offering price of additional shares that the underwriters have the option to purchase.

(3) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

SUBJECT TO COMPLETION, DATED [ ], 2021

PRELIMINARY PROSPECTUS

Shares

Common Stock

This is an initial public offering of shares of common stock of Journey Medical Corporation. All of the shares being included in this offering are being sold by us.

Prior to this offering, there has been no public market for the common stock. We currently expect that the initial public offering price will be between $ and $ per share of our common stock.

We have applied to list our common stock on the Nasdaq Capital Market under the symbol "DERM."

We are an "emerging growth company" as defined in the Jumpstart Our Business Startups Act and may elect to comply with certain reduced reporting requirements. See "*Prospectus Summary — Implications of Being an Emerging Growth Company and Smaller Reporting Company*."

Fortress Biotech, Inc. will at the completion of this offering have voting control of the Company through its ownership of our Class A Common Stock. As a result, following this offering, we will be a "controlled company" under the listing requirements of Nasdaq and the Nasdaq Marketplace Rules. See "*Risk Factors — Risks Related to our Relationship with Fortress Biotech, Inc."*

Investing in our common stock involves a high degree of risk. See "*Risk Factors*" beginning on page 10.

	Per Share	Total
Initial public offering price	$	$
Underwriting discounts and commissions(1)	$	$
Proceeds, before expenses, to us	$	$

(1) See "*Underwriting*" for a description of all compensation payable to the underwriters.

The underwriters may also purchase up to an additional shares of our common stock at the public offering price, less the underwriting discounts and commissions payable by us, to cover over-allotments, if any, within 45 days from the date of this prospectus. The underwriters expect to deliver the shares of common stock against payment in New York, New York, to purchasers on or about , 2021.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

B. Riley Securities

TABLE OF CONTENTS

Through and including , 2021 (the 25th day after the date of this prospectus), all dealers that buy, sell, or trade shares of our common stock, whether or not participating in our initial public offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriter and with respect to its unsold allotments or subscriptions.

Neither we nor the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or in any free writing prospectuses we have prepared. We take no responsibility for and can provide no assurance as to the reliability of any other information that others may give you. We are offering to sell, and seeking offers to buy, shares of our common stock only in jurisdictions where offers and sales are permitted. The information in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of shares of our common stock. Our business, financial condition, results of operations and prospects may have changed since that date.

For investors outside the United States: Neither we nor any of the underwriters have done anything that would permit this offering or the possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. Persons outside of the United States who come into possession of this prospectus must inform themselves about, and observe any restrictions relating to, this offering and the possession and distribution of this prospectus outside of the United States.

ABOUT THIS PROSPECTUS

In this prospectus, unless the context suggests otherwise, references to "Journey," the "Company," "we," "us" and "our" refer to Journey Medical Corporation.

This prospectus describes the specific details regarding this offering and the terms and conditions of the common stock being offered hereby and the risks of investing in our common stock. Unless otherwise specified herein, references to our common stock mean references to our undesignated shares of common stock, $0.0001 par value per share. See "*Description of Capital Stock*." You should read this prospectus, any free writing prospectus and the additional information about us described in the section entitled "*Where You Can Find More Information*" before making your investment decision.

Neither we, nor any of our officers, directors, agents or representatives or underwriters, make any representation to you about the legality of an investment in our common stock. You should not interpret the contents of this prospectus or any free writing prospectus to be legal, business, investment or tax advice. You should consult with your own advisors for that type of advice and consult with them about the legal, tax, business, financial and other issues that you should consider before investing in our common stock.

TRADEMARKS AND TRADENAMES

We own various U.S. federal trademarks and unregistered trademarks, including our company name, logo and solution names and other trade or service marks. All other trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus are referred to without the symbols® and ™, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their right thereto.

PROSPECTUS SUMMARY

This summary highlights selected information that is presented in greater detail elsewhere in this prospectus. This summary does not contain all of the information you should consider before investing in our common stock. Before investing in our common stock, you should read this entire prospectus carefully, including the sections titled "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our consolidated financial statements and the related notes included elsewhere in this prospectus before making an investment decision. Some of the statements in this prospectus constitute forward-looking statements that involve risks and uncertainties. See the section entitled "Special note regarding forward-looking statements." Unless the context otherwise requires, the terms "Journey," "JMC," "we," "us" and "our" refer to Journey Medical Corporation.

Overview

Journey Medical Corporation is a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. We are managed and led by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life, and enabling physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, those products through our exclusive field sales force. See *"Business — Employees and Human Capital Management."*

As of June 30, 2021, our major marketed products, which have been approved by the U.S. Food and Drug Administration ("FDA") for sale in the United States, include:

- Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis), acquired and launched in May 2021;
- Accutane® (an oral isotretinoin drug for the treatment of severe recalcitrant acne), licensed in July 2020 and launched in April 2021;
- Targadox® (an oral doxycycline drug for adjunctive therapy for severe acne), licensed in March 2015 and launched in October 2016;
- Ximino® (an oral minocycline drug for the treatment of moderate to severe acne), acquired and launched in September 2019; and
- Exelderm® Cream and Solution (a broad-spectrum antifungal intended for topical use), acquired and launched in September 2018.

Additionally, we sell three authorized generic products:

- doxycycline hyclate immediate release tablets, launched in May 2018;
- minocycline hydrocholoride extended release capsules, launched in April 2020; and
- sulconazole nitrate cream and solution, launched in January 2020.

For the 2020 fiscal year, we had revenue of $44.5 million for our products that were marketed as of the end of 2020. We expect to continue to market these prescription drugs in the U.S. through our field sales force.

For the six months ended June 30, 2021, we had revenue of $26.0 million for our marketed products. An important part of our growth strategy is to identify new business development opportunities, including development stage and commercial drugs that we may acquire from other pharmaceutical companies. On June 29, 2021, we entered a license, collaboration, and assignment agreement (the "DFD-29 Agreement") with Dr. Reddy's Laboratories Ltd. ("Dr. Reddy's") for the collaborative development and commercialization of the DFD-29 program (minocycline HCl 40 mg capsules) for the treatment of rosacea. Additionally, we recently acquired two FDA-approved drugs. In May 2021, we acquired global ownership rights, title, and

interest to Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis) from Dermira, Inc., a wholly owned subsidiary of Eli Lilly and Company. In December 2020, we acquired an anti-itch product from Sun Pharmaceutical Industries, Inc ("Sun"), which we plan to launch in the U.S. in the second half of 2021 or early 2022. We are in various stages of discussion for other opportunities, both commercial and development stage, that could drive additional growth in the business. Successful development and commercialization of any future in-licensed development stage or commercial drugs will require us to navigate the many laws and regulations of governmental authorities and regulatory agencies around the world, including the FDA, relating to the manufacture, development, approval and commercialization of investigational drugs. For development stage drugs, we may require financial resources significantly in excess of those that may be received by the Company upon completion of this initial public offering, and it may take many years for us to receive marketing approval, if ever, for any in-licensed product candidate.

We intend to use the majority of the proceeds from this offering to pursue both development stage and commercial opportunities. In addition, we expect to use offering proceeds for commercialization expenses related to existing products and the launch of new products, development costs associated with our current development stage product, DFD-29, along with potential new development stage products, as well as for working capital, general administrative expenses and general corporate purposes. We may also use a portion of the net proceeds for acquisitions of, or strategic investments in, complementary businesses, products, services, or technologies. However, we do not have any agreements or commitments to enter into any material acquisitions or investments at this time.

Corporate Highlights/Milestone Achievements

- Our management has over 135 years of sales and marketing experience and has managed marquee brands generating over $3 billion in peak sales, collectively, at leading dermatology organizations such as Medicis Pharmaceuticals, Roche, Sun Dermatology, Bristol Myers Squibb, PruGen Pharmaceuticals, and PharmaDerm.
- Our seasoned field sales force of 68 professionals has an average of over 10 years of dermatology sales experience with national coverage in major U.S. markets.
- Our marketing efforts have achieved market leading positions for our three established brands (Targadox, Ximino and Exelderm) in each of their respective markets. For the year ending December 31, 2020, we recorded revenue of $44.5 million. For the six months ended June 30, 2021, we recorded revenue of $26.0 million, an increase of 22% over the six months ended June 30, 2020.
- We recently entered into an agreement with Dr. Reddy's Laboratories, Ltd. for DFD-29, a late-stage development program for a modified release oral minocycline product candidate that is being evaluated for the treatment of inflammatory lesions of rosacea.
- We recently acquired and launched Qbrexza, which achieved in excess of $24 million in sales for 2020 while part of Eli Lilly and Company.
- We recently launched Accutane (isotretinoin) for the treatment of recalcitrant nodular acne in a market which had approximately two million prescriptions in 2020.
- We intend to launch our anti-itch topical cream and lotion, which we acquired in December 2020, in the second half of 2021 or early 2022.

Fortress/Journey Relationship

Journey has a seven-year operating history and anticipates remaining a majority-owned subsidiary of Fortress Biotech, Inc. (NASDAQ: FBIO) ("Fortress") after this offering. We have access to over 30 Fortress employees and consultants, who possess significant expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations, and manufacturing. See "*Risk Factors — Risks Related to our Relationship with Fortress Biotech, Inc*." In connection with the closing of this offering, we intend to enter into a shared services agreement with Fortress for them to continue to provide consulting services and the continued use of their personnel.

Risk Factors

An investment in our common stock is subject to broad range of risks and should only be made after a careful consideration of such risks. For a discussion of some of the risks you should consider before purchasing our common stock, you are urged to carefully review and consider the section entitled "Risk Factors."

Risk Factor Summary

Our business is subject to a number of risks of which you should be aware before making an investment decision. The risks described below are a summary of the principal risks associated with an investment in us and are not the only risks we face. These risks are more fully described in the section titled "Risk Factors" following this prospectus summary. Please read the information in the section entitled "Risk Factors," for a more thorough description of these and other risks.

Risks Related to Our Business, Industry and Existing Operating Revenue Stream

- Our products and product candidates are subject to time and cost intensive regulation and clinical testing. As a result, they may never be successfully developed or commercialized. Further, any approved product may be subject to post-marketing requirements, including studies or clinical trials, the results of which could cause such product to be withdrawn from the market.
- The majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or an increase in market share of existing competitor products, any of which could have a significant adverse impact on our operating income. Two of our marketed products, Qbrexza and Ximino, as well as DFD-29, currently have patent protection. Three of our marketed products, Accutane, Targadox, and Exelderm, do not have patent protection or otherwise are not eligible for patent protection.
- We operate in a heavily regulated industry, and we cannot predict the impact that any future legislation or administrative or executive action may have on our operations.
- Our revenue is dependent mainly upon sales of our dermatology products and any setback relating to the sale of such products could impair our operating results.
- Our competitors may develop treatments for our products' target indications, which could limit our products' commercial opportunity and profitability.
- If our products do not achieve broad market acceptance, including by government and third-party payors, the revenues from any such product will likely be limited.

Risks Related to Our Reliance on Third Parties

- We rely on third parties for our several aspects of our operations, which limits our control over product development, marketing, and sale processes and may hinder our ability to develop and commercialize our products in a cost-effective and timely manner.

Risks Related to Our Growth

- Our future growth may depend on our ability to identify, develop, and acquire or in-license products and integrate them into our operations, at which we may be unsuccessful.
- We may expend resources on unsuccessful product candidates or indications and may fail to capitalize on more profitable or successful product candidates or indications.

Risks Related to Development and Regulatory Approval of Our Product Candidates (DFD-29)

- The success of our business, including our ability to finance our company and generate additional revenue in the future, may depend on the successful development and regulatory approval of the DFD-29 product candidate and any future product candidates that we may develop, in-license or acquire.

- Clinical drug development is very expensive, time-consuming and uncertain. Our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates, which could prevent or delay regulatory approval and commercialization.
- We expect to rely on third-party CROs (including, in the context of DFD-29, our licensor/seller Dr. Reddy's laboratories) and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process for our product candidates. If these third parties do not meet our requirements, conduct the trials as required or otherwise provide services as anticipated, we may not be able to satisfy our contractual obligations or obtain regulatory approval for, or successfully commercialize, our current or any future product candidates when expected or at all.

Risks Pertaining to Intellectual Property, Generic Competition and Paragraph IV Litigation

- If we are unable to maintain sufficient patent protection for our technology and products, our competitors could develop and commercialize products similar or identical to ours.
- We may be required to expend substantial resources relating to litigation for infringement of third-party intellectual property rights or enforcing our or our licensors' patents.
- Any dispute with our licensors may affect our ability to develop or commercialize our product candidates.
- Generic drug companies may submit applications seeking approval to market generic versions of our products.
- In connection with these applications, generic drug companies may seek to challenge the validity and enforceability of our patents through litigation and/or with the United States Patent and Trademark Office ("USPTO"). Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings). For example, Perrigo filed a Paragraph IV certification pertaining to the patents covering Qbrexza, which ultimately led to a district court patent litigation.
- As a result of the loss of any patent protection from such litigation or USPTO proceedings, or the "at-risk" launch by a generic competitor of our products, our products could be sold at significantly lower prices, and we could lose a significant portion of sales of that product in a short period of time, which could adversely affect our business, financial condition, operating results and prospects.

Risks Related to the COVID-19 Pandemic

- Major public health issues, and specifically the pandemic caused by the COVID-19 outbreak, could have an adverse effect on our product revenues and any future clinical trials.

Risks Related to Our Finances and Capital Requirements

- Due to the numerous risks and uncertainties associated with pharmaceutical product development, we may incur losses and may be unable to maintain profitability.
- If we are unable to raise capital as needed, we may be forced to delay, reduce, or eliminate our operations.

Risks Relating to this Offering and Owning our Common Stock

- If you purchase shares of our common stock in this offering, your investment will experience immediate dilution.
- There has been no public market for our common stock prior to this offering and an active market in which investors can resell their shares may not develop.
- Our operating results have fluctuated in the past and we expect them to continue to do so. Any such fluctuation may cause our performance to fall below expectations, and our stock price may suffer.

Risks Related to our Relationship with Fortress Biotech, Inc.

- Fortress controls a voting majority of our common stock, through its ownership of our Class A Common Stock, which could be detrimental to our other shareholders. Further, Fortress' ownership qualifies us as a "controlled company" under the NASDAQ listing standards.

- Fortress' financial obligations and any potential risk of default may adversely affect the Company or constrain our ability to take certain actions.

Corporate Information

Journey was incorporated in Delaware in 2014. Our executive offices are located at 9237 E Via de Ventura Blvd. Suite 105, Scottsdale, AZ 85258. Our telephone number is 480-434-6670, and our e-mail address is info@jmcderm.com or ir@jmcderm.com. Our website address is www.jmcderm.com. We have not incorporated by reference into this prospectus the information on our website, and you should not consider it to be a part of this document.

Implications of Being an Emerging Growth Company and Smaller Reporting Company

We are an "emerging growth company," as defined in the Jumpstart Our Business Startups Act, or the JOBS Act (an "EGC") and may take advantage of certain reduced disclosure and other requirements that are otherwise applicable to public companies. These provisions include (i) exemption from the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002; (ii) reduced disclosure obligations regarding executive compensation; (iii) exemption from holding a nonbinding advisory vote on executive compensation and golden parachute payments not previously approved; and (iv) permission to include only two years of audited financial statements and corresponding disclosure in the "Management's Discussion and Analysis of Financial Condition and Results of Operation."

We may take advantage of these exemptions until the earliest occurrence of the following events, at which point we would cease to be an EGC: (i) the last day of our fiscal year following the fifth anniversary of this offering's completion date; (ii) the last day of the fiscal year in which we have total annual gross revenues of $1.07 billion or more; (iii) the date on which we have issued more than $1 billion in non-convertible debt during the previous three years; or (iv) the date on which we are deemed to be a large accelerated filer under the SEC's rules. In addition, the JOBS Act allows EGCs to delay compliance with new or revised accounting standards until those standards would apply to private companies. We have elected to avail ourselves of this exemption and, consequently, we may not be subject to the same requirements to adopt certain accounting standards as other non-EGC public companies. As a result, the information that we provide in this prospectus may be different than the information you receive from other public companies in which you have invested.

We are also a smaller reporting company ("SRC") as defined under Item 10(f)(1) of Regulation S-K, and we will remain a SRC until the fiscal year following the determination that our voting and non-voting common shares held by non-affiliates is more than $250 million measured on the last business day of our second fiscal quarter, or our annual revenues are more than $100 million during the most recently completed fiscal year and our voting and non-voting common shares held by non-affiliates is more than $700 million measured on the last business day of our second fiscal quarter. Similar to EGCs, SRCs are able to provide simplified executive compensation disclosure, may be exempt from the auditor attestation requirements of Section 404, and have certain other reduced disclosure obligations, including, among other things, being required to provide only two years of audited financial statements and not being required to provide selected financial data, supplemental financial information or risk factors.

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

THE OFFERING

Common stock offered by us	shares.
Option to purchase additional shares	We have granted the underwriters an option for a period of 45 days to purchase up to additional shares of common stock.
Common stock to be outstanding after this offering	shares (or shares if the underwriters exercise their option to purchase additional shares in full).
Use of proceeds	We estimate that the net proceeds to us from this offering will be approximately $ million, or approximately $ million if the underwriters exercise their option to purchase additional shares in full, assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We intend to use the majority of the proceeds from this offering for general corporate purposes, including working capital, research and development, payments for research and development — licenses acquired, sales and marketing activities, general administrative matters, operating expenses and capital expenditures. We may also use a portion of the net proceeds from this offering to acquire or invest in businesses, products, services or technologies. However, we currently have no agreements or commitments for any material acquisitions or investments at this time.
Risk factors	Investing in our common stock involves a high degree of risk. See the section titled "*Risk Factors*" and the other information included in this prospectus for a discussion of factors you should consider carefully before deciding to invest in our common stock.
Proposed Nasdaq Capital Market symbol	"DERM"

The total number of shares of our common stock that will be outstanding after this offering is based on shares of common stock outstanding as of , 2021, assuming the conversion of shares of our 8% Cumulative Convertible Class A Preferred Stock, par value $0.0001 per share (the "Class A Preferred Stock"), into an aggregate of shares of our common stock immediately following the closing of this offering (assuming an initial public offering of at least $25,000,000 at an offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus), and excludes, as of June 30, 2021:

- Options to purchase 2,114,333 shares of our common stock at a weighted average share price of $0.79 per share.
- 720,524 shares of common stock upon the vesting of restricted stock units.
- 1,146,667 shares of common stock reserved for future issuance under our 2015 Stock Plan at June 30, 2021.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables set forth a summary of our consolidated financial data for the periods and as of the dates indicated. We derived our summary consolidated statements of operations for the six months ended June 30, 2021 and 2020 and for the years ended December 31, 2020 and 2019 and our summary consolidated balance sheet data as of June 30, 2021 from our condensed consolidated financial statements and as of December 31, 2020 from our audited consolidated financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results to be expected in any future period. You should read the following summary consolidated financial data in conjunction with the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements, the accompanying notes, our condensed consolidated financial statements and accompanying notes, and other financial information included elsewhere in this prospectus.

	(Unaudited) Six Months Ended June 30,		Years Ended December 31	
	2021	2020	2020	2019
Product revenue, net	$ 26,007	$ 21,361	$ 44,531	$ 34,921
Operating expenses				
Cost of goods sold – product revenue	11,392	6,934	14,594	10,532
Research and development	29	—	—	—
Research and development – licenses acquired	13,743	—	—	—
Selling, general and administrative	14,021	10,441	22,086	19,130
Total operating expenses	39,185	17,375	36,680	29,662
Income (loss) from operations	(13,178)	3,986	7,851	5,259
Other expense				
Interest expense	1,563	305	698	255
Change in fair value of derivative liability	182	—	—	—
Total other expense	1,745	305	698	255
Income (loss) before income taxes	(14,923)	3,681	7,153	5,004
Income tax (benefit) expense	(3,326)	929	1,870	1,379
Net (loss) income	**$ (11,597)**	**$ 2,752**	**$ 5,283**	**$ 3,625**
Net (loss) income per common share – basic	$ (1.27)	$ 0.30	$ 0.58	$ 0.40
Net (loss) income per common share – diluted	$ (1.27)	$ 0.25	$ 0.49	$ 0.36
Weighted average common shares outstanding – basic	9,159,841	9,133,333	9,135,985	9,133,333
Weighted average common shares outstanding – diluted	9,159,841	10,826,279	10,836,122	10,075,804

	(Unaudited) As of June 30, 2021		December 31, 2020
	Actual	As Adjusted[1]	
Balance Sheet Data			
Cash	$12,176		$ 8,246
Working capital	9,064		7,182
Total assets	72,725		51,906
Total liabilities	73,517		41,614
Common stock and class A common stock	1		1
(Accumulated Deficit) retained earnings	(6,477)		5,171
Total stockholders (deficit)equity	(792)		10,292

(1) The as adjusted information set forth above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. See ''Capitalization.''

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements within the meaning of the federal securities laws, which statements are subject to substantial risks and uncertainties and are based on estimates and assumptions. All statements other than statements of historical facts contained in this prospectus, including statements regarding our future results of operations or financial condition, business strategy and plans, financial needs, and objectives of management for future operations are forward-looking statements. In some cases, you can identify forward-looking statements because they contain words such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplate," "believe," "estimate," "predict," "would," "potential" or "continue" or the negative of these words or other similar terms or expressions that concern our expectations, strategy, plans or intentions. These forward-looking statements include, among others, statements relating to our future financial performance, our business prospects and strategy, our market opportunity and the potential growth of that market, our anticipated financial position, our liquidity and capital needs and other similar matters. These forward-looking statements are based on management's current expectations and assumptions about future events, which are inherently subject to uncertainties, risks and changes in circumstances that are difficult to predict.

Our actual results may differ materially from those expressed in, or implied by, the forward-looking statements included in this prospectus as a result of various factors, including, among others:

- our future financial performance, including our expectations regarding our revenue, cost and operating expenses, including changes in technology and development, selling and marketing and general and administrative expenses (including any components of the foregoing), gross profit and our ability to achieve, and maintain, future profitability;
- our business plan and our ability to effectively manage our growth;
- economic and industry trends, projected growth, or trend analysis;
- political, economic, legal, social and health risks, including the COVID-19 pandemic and subsequent public health measures that may affect our business or the global economy and the actions we may take in response thereto;
- developments and projections relating to our competitors and industry, including generic competition;
- increases in costs, disruption of supply or shortage of raw materials, which could harm our business;
- our and our licensors' ability to obtain, establish, maintain, protect and enforce intellectual property and proprietary protection for our products and technologies and to avoid claims of infringement, misappropriation or other violation of third-party intellectual property and proprietary rights;
- the outcome of any current or future litigation;
- our ability to hire and retain key management, scientific and engineering personnel;
- our ability to obtain additional financing in this or future offerings;
- our beliefs and objectives for future operations;
- our ability to maintain, protect, and enhance our intellectual property;
- our expectations concerning relationships with third parties, including strategic partners;
- the volatility of the trading price of our common stock;
- evolving regulations and the potential for unfavorable changes to, or failure by us to comply with, regulations, which could substantially harm our business and operating results;
- our expectations regarding the period during which we qualify as an emerging growth company under the JOBS Act; and
- our expectations regarding use of proceeds from this offering.

We have based the forward-looking statements contained in this prospectus primarily on our current expectations and projections about future events and trends that we believe may affect our business, financial

condition, results of operations, prospects, business strategy and financial needs. The outcome of the events described in these forward-looking statements is subject to risks, uncertainties, assumptions and other factors described in the section captioned "Risk Factors" and elsewhere in this prospectus. These risks are not exhaustive. Other sections of this prospectus include additional factors that could adversely impact our business and financial performance. Furthermore, new risks and uncertainties emerge from time to time and it is not possible for us to predict all risks and uncertainties that could have an impact on the forward-looking statements contained in this prospectus. We cannot assure you that the results, events and circumstances reflected in the forward-looking statements will be achieved or occur, and actual results, events or circumstances could differ materially from those described in the forward-looking statements. You should, however, review the factors and risks and other information we describe in the reports we will file from time to time with the SEC after the date of this prospectus. See "*Where You Can Find More Information.*"

In addition, statements that "we believe" and similar statements reflect our beliefs and opinions on the relevant subject. These statements are based upon information available to us as of the date of this prospectus, and while we believe such information forms a reasonable basis for such statements, such information may be limited or incomplete, and our statements should not be read to indicate that we have conducted an exhaustive inquiry into, or review of, all potentially available relevant information. These statements are inherently uncertain and investors are cautioned not to unduly rely upon these statements.

You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement of which this prospectus forms a part with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.

The forward-looking statements made in this prospectus relate only to events as of the date on which such statements are made. We undertake no obligation to update any forward-looking statements after the date of this prospectus or to conform such statements to actual results or revised expectations, except as required by law.

RISK FACTORS

An investment in our common stock or any other type of equity or debt securities that we may offer (together, our "Securities") is speculative in nature and involves a high degree of risk. You should carefully consider the risks described below, together with all of the other information included in this Registration Statement on Form S-1, as well as the risks, uncertainties, and other information set forth in any reports and other materials we may file or furnish with the SEC before making an investment decision. If any of the following risks were to occur, our business, financial condition, results of operations, or future growth prospects may be materially and adversely affected. In that case, the price of our Securities could decline, and you may lose all or part of your investment.

Risks Related to Our Business, Industry and Existing Operating Revenue Stream

Future revenue from sales of our dermatology products may be lower than expected or lower than in previous periods.

The vast majority of our operating income for the foreseeable future is expected to come from the sale of our dermatology products. Any setback that may occur with respect to such products could significantly impair our operating results and/or reduce our revenue and the value of our Securities. Setbacks for such products could include, but are not limited to, issues related to: supply chain, shipping; distribution; demand; manufacturing; product safety; product quality; marketing; government regulation, including but not limited to pricing or reimbursement; licensing and approval; intellectual property rights; competition with existing or new products, including third-party generic competition; product acceptance by physicians, other licensed medical professionals, and patients; and higher than expected total rebates, returns or recalls.

Also, the majority of our sales derive from products that are without patent protection and/or are or may become subject to third-party generic competition, the introduction of new competitor products, or increased market share of existing competitor products, any of which could have a significant adverse effect on our operating income.

We face challenges as our products face generic competition and/or losses of exclusivity.

Our products do and may compete with well-established products, both branded and generic, with similar or the same indications. We face increased competition from manufacturers of generic pharmaceutical products, who may submit applications to FDA seeking to market generic versions of our products. In connection with these applications, the generic drug companies may seek to challenge the validity and enforceability of our patents through litigation. When patents covering certain of our products (if applicable) expire or are successfully challenged through litigation or in USPTO proceedings, if a generic company launches a competing product "at risk," or when the regulatory or licensed exclusivity for our products (if applicable) expires or is otherwise lost, we may face generic competition as a result. Generic versions are generally significantly less expensive than branded versions, and, where available, may be required to be utilized before or in preference to the branded version under third-party reimbursement programs, or substituted by pharmacies. Accordingly, when a branded product loses its market exclusivity, it normally faces intense price competition from generic forms of the product. To successfully compete for business with managed care and pharmacy benefits management organizations, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care.

Any disruptions to the capabilities, composition, size or existence of our field sales force may have a significant adverse impact on our existing revenue stream. Further, our ability to effectively market and sell any future products that we may develop will depend our ability to establish and maintain sales and marketing capabilities or to enter into agreements with third parties to market, distribute and sell any such products.

Our field sales force has been and is expected to continue to be an important contributor to our commercial success. Any disruptions to our relationship with such field sales force or the professional employer organization that employs our field sales force, could materially adversely affect our product sales. We currently rely, and may continue to rely, on professional employer organizations and staffing organizations for the employment of our field sales force. See *"Business — Employees and Human Capital Management."*

The establishment, development, and/or expansion of a field sales force, either by us or certain of our partners or vendors, or the establishment of a contract field sales force to market any products for which we may have or receive marketing approval is expensive and time-consuming and could delay any such product launch or compromise the successful commercialization of such products. If we are unable to establish and maintain sales and marketing capabilities or any other non-technical capabilities necessary to commercialize any products that may be successfully developed, we will need to contract with third parties to market and sell such products. We may not be able to establish or maintain arrangements with third parties on commercially reasonable terms, or at all.

Our current and potential future product candidates may not receive regulatory approval, or such approval may be delayed, which would have a material adverse effect on our business and financial condition. Further, even if a product receives regulatory approval, such product will remain subject to substantial regulatory scrutiny.

Our current and potential future product candidates and the activities associated with their development and commercialization, including their design, testing, manufacture, safety, efficacy, recordkeeping, labeling, storage, approval, advertising, promotion, sale and distribution, are subject to comprehensive regulation by the FDA and other regulatory agencies in the United States, the European Medicines Agency (the "EMA"), and similar regulatory authorities outside the United States. Our failure to obtain marketing approval for any current or future product candidates will prevent us from commercializing the product candidates. Further, any products or future products candidates we license or acquire will be subject to ongoing requirements and review by such regulatory authorities.

We have only limited experience in filing and supporting the applications necessary to gain marketing approvals and expect to rely on third parties to assist us in this process. To secure marketing approval, we will be required to establish a product candidate's safety and efficacy by submitting extensive preclinical and clinical data and supporting information for each therapeutic indication. We will further be required to submit information about the product manufacturing and to undergo regulatory inspection of our third-party manufacturing facilities to ensure ongoing compliance with current Good Manufacturing Practice ("cGMP") requirements.

Any of our current or future product candidates may not be effective, may be only moderately effective or may prove to have undesirable or unintended side effects, toxicities or other characteristics that may preclude our obtaining marketing approval or prevent or limit commercial use. If our current or future product candidates receive(s) marketing approval, the accompanying label may limit the approved use of our drug in this way, which could limit sales of the product.

The marketing approval process, both in the United States and abroad, is time consuming and expensive. Approval may take many years, if it is granted at all and can vary substantially based upon a variety of factors, including the type, complexity and novelty of the product candidates involved. Our product candidates could be delayed in receiving, or fail to receive, regulatory approval for many reasons, including the following: the FDA or comparable foreign regulatory authorities may disagree with the design or implementation of our clinical trials; the FDA or comparable foreign regulatory authorities may disagree with our development strategy; we may be unable to demonstrate to the satisfaction of the FDA or comparable foreign regulatory authorities that a drug candidate is safe and effective for its proposed indication or is suitable to identify appropriate patient populations; the results of clinical trials may not meet the level of statistical significance required by the FDA or comparable foreign regulatory authorities for approval; we may be unable to demonstrate that a product candidate's clinical and other benefits outweigh its safety risks.

Changes to marketing approval policies or the regulatory landscape during the development period may cause rejection of or delays in the approval of an application. Regulatory authorities have substantial discretion in the approval process and may refuse to accept any application or decide that our data is insufficient for approval and require costly additional preclinical studies or clinical trials. In addition, varying interpretations of the data obtained from preclinical and clinical testing could delay, limit or prevent marketing approval of a product candidate. Any marketing approval we ultimately obtain may be limited or subject to restrictions or post-approval commitments that render the approved product not commercially viable. If we experience delays in obtaining or fail to obtain or maintain any necessary approvals of any current or future product candidates, receive approval for fewer or more limited indications than we request or without including the labeling claims we desire, our future commercial prospects may be harmed and

our ability to generate revenue may be materially impaired. Even if we do received approval, it may be contingent on the performance of costly post-marketing clinical trials to verify whether or not the drug provides the anticipated clinical benefit, in order to maintain the approval.

Regulatory approval for any approved product is limited by the FDA to those specific indications and conditions for which clinical safety and efficacy have been demonstrated.

Any regulatory approval is limited to those specific diseases and indications for which a product is deemed to be safe and effective. If the FDA or any regulatory authority limits the scope of our indication, or if we are unable to obtain FDA approval for any desired future indications for our products, our ability to effectively market and sell our products may be reduced and our business may be adversely affected. Further, we are only permitted to promote our products for those indications that the FDA specifically approves and are restricted from making communications regarding uses not approved and described in the product's labeling. If our promotional activities fail to comply with these regulations or guidelines, we may be subject to advisory or enforcement action by these authorities. In addition, our failure to follow FDA requirements or guidelines relating to promotion and advertising may cause the FDA to suspend or withdraw an approved product from the market, require a recall or institute fines, or could result in disgorgement of money, operating restrictions, injunctions or criminal prosecution, any of which could harm our business.

If any potential future product candidate is approved and our contract manufacturer fails to produce the product in the volumes that we require on a timely basis, or to comply with stringent regulations applicable to pharmaceutical drug manufacturers, we may face delays in the commercialization of this product candidate or be unable to meet market demand, and may lose potential revenues.

The manufacture of pharmaceutical products requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls, and the use of specialized processing equipment. Any termination or disruption of any current or future relationships relating to product development may materially harm our business and financial condition and frustrate any commercialization efforts for affected current or future product candidates.

Any current or future contract manufacturers we engage must comply with strictly enforced federal, state and foreign regulations, including cGMP requirements enforced by the FDA through its establishment inspection program. Despite the existence of contract manufacturing agreements and shared cGMP responsibilities our contract manufacturers' may ignore these contractual provisions, or otherwise fail to meet the minimum standards set forth in the cGMP regulations, resulting in manufacturing non-compliance. This may go unnoticed or uncorrected despite our best efforts to regulatory audit or confirm the CMOs regulatory responsibilities. Any failure to comply with applicable regulations may result in fines and civil penalties, suspension of production, suspension or delay in product approval, product seizure or recall, or withdrawal of product approval, and would limit the availability of our product. Any manufacturing defect or error discovered after products have been produced and distributed could result in even more significant consequences, including costly recalls, re-stocking costs, damage to our reputation and potential for product liability claims.

If the CMOs upon which we rely to manufacture any current products, and any potential product candidates we may in-license or acquire, fail to deliver the required commercial quantities on a timely basis at commercially reasonable prices, we would likely be unable to meet demand for our products and we would lose potential revenues.

If serious adverse or unacceptable side effects are identified during the development of any of any current or future product candidates, we may need to abandon or limit our development of some of the other potential product candidates.

If any current or future product candidates are associated with undesirable side effects, toxicities, or other negative characteristics, we may need to abandon such products' development or limit development to more narrow uses or subpopulations. Such side effects may affect patient recruitment or the ability of enrolled patients to complete the trial and could result in potential product liability claims. Many compounds that show initial promise in early-stage testing are later found to cause side effects that prevent further

development. If our clinical trials reveal severe or prevalent side effects, our trials could be suspended or terminated, we may be unable to recruit patients and enrolled patients may be unable to complete the trials, and the FDA or comparable foreign regulatory authorities could order issue a clinical hold, or order us to cease further development or deny approval of the product candidate. The FDA may also request additional data, which it has done with increased prevalence in recent years, which has resulted in substantial delays in new drug approvals. Undesirable side effects caused by any current or future product candidates could also result in the inclusion of unfavorable information in our product labeling, denial of regulatory approval by the FDA or other regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing and generating revenues from the sale of such product candidate.

If one or more of our current products or any future product candidate receives marketing approval and we or others later identify undesirable adverse events or side effects caused by this product, or we fail to comply with post-market regulatory requirements, a number of potentially significant negative consequences could result, including:

- regulatory authorities may require the addition of unfavorable labeling statements, specific warnings or a contraindication;
- regulatory authorities may suspend or withdraw their approval of the product, or require it to be removed from the market;
- we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product; or
- our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of any current or future product candidate or could substantially increase our commercialization costs and expenses, which could delay or prevent us from generating significant revenues.

All of our current and future products will remain subject to substantial regulatory scrutiny even after receiving regulatory approval.

Any products or current or future product candidates we may license or acquire will be subject to ongoing regulatory and compliance requirements and oversight by the FDA and other regulatory authorities. These requirements include labeling, packaging, storage, advertising, promotion, record-keeping and submission of safety and other post-market information and reports, registration and listing requirements, cGMP requirements relating to manufacturing, quality control, quality assurance and corresponding maintenance of records and documents, requirements regarding the distribution of samples to physicians and other licensed medical professionals and recordkeeping of the drug.

The Food and Drug Administration Amendments Act of 2007 (the "FDAAA"), granted significant expanded authority to the FDA, much of which was aimed at improving the safety of drug products before and after approval. The FDA may also impose requirements for costly post-marketing studies or clinical trials and surveillance to monitor the safety or efficacy of the product. The FDA closely regulates the post-approval marketing and promotion of drugs to ensure drugs are marketed only for the approved indications and in accordance with the provisions of the approved labeling. The FDA imposes stringent restrictions on manufacturers' communications regarding off-label use and if we do not market our products for only their approved indications, we may be subject to enforcement action for off-label marketing. While physicians and other healthcare providers may choose to prescribe drugs for uses that are not described in the product's labeling and for uses that differ from those tested in clinical studies and approved by the regulatory authorities, our ability to promote the products is limited to those indications that are specifically approved by the FDA. These "off-label" uses are common across medical specialties and may constitute an appropriate treatment for some patients in varied circumstances. Regulatory authorities in the U.S. generally do not regulate the practice of medicine, including the clinical behavior of physicians and other healthcare providers in their choice of treatments. Regulatory authorities do, however, restrict communications by pharmaceutical companies on the subject of off-label use.

Violations of the Federal Food, Drug and Cosmetic Act (the "FDCA") relating to the promotion of prescription drugs may lead to investigations alleging violations of federal and state health care fraud and abuse laws, as well as state consumer protection laws.

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

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

The FDA's policies may change, and additional government regulations may be enacted that could prevent, limit or delay regulatory approval of our current or future product candidates. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained.

Our current and future relationships with customers and third-party payors in the United States and elsewhere may be subject, directly or indirectly, to applicable anti-kickback, fraud and abuse, false claims, transparency, health information privacy and security and other healthcare laws and regulations, which could expose us to criminal sanctions, civil penalties, contractual damages, reputational harm, administrative burdens and diminished profits and future earnings.

Healthcare providers, physicians and third-party payors in the United States and elsewhere will play a primary role in the recommendation and prescription of any current products or current or future product candidates for which we obtain marketing approval. Our current and future arrangements with third-party payors for the sales of our products and sales to customers may expose us to broadly applicable fraud and abuse and other healthcare laws and regulations, including, without limitation, the federal Anti-Kickback Statute and the federal False Claims Act, which may constrain the business or financial arrangements and relationships through which we sell, market and distribute any current products or current or future product candidates for which we obtain marketing approval. In addition, we may be subject to transparency laws and patient privacy regulation by U.S. federal and state governments and by governments in foreign jurisdictions in which we conduct our business. The applicable federal, state and foreign healthcare laws and regulations that may affect our ability to operate include:

- the federal Anti-Kickback Statute ("AKS"), which prohibits, among other things, persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in cash or in kind, to induce or reward, or in return for, either the referral of an individual for, or the purchase, order or recommendation of, any good or service, for which payment may be made under federal and state healthcare programs, such as Medicare and Medicaid. The Health and Human Services Office of Inspector General ("OIG") continues to make modifications to existing AKS safe harbors which may increase liability and risk as well as adversely impact sales relationships. On November 20, 2020, OIG issued the final rule for Safe Harbors under the Federal AKS. This new

final rule creates additional safe harbors including ones pertaining to patient incentives. The final rule also removed safe harbor protections for rebates and other reductions in price paid by manufacturers to plan sponsors under Medicare Part D, either directly or through pharmacy benefit managers acting under contract with plan sponsors, unless the reduction in price is required by law. OIG is able to modify safe harbors as well as regulatory compliance requirements, which could impact our business adversely. If the removal of safe harbors for rebates takes effect, our ability to negotiate coverage and formulary placement for Part D plans may be affected. The majority of states also have statutes or regulations similar to these federal laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor;

- federal civil and criminal false claims laws and civil monetary penalty laws, including the federal False Claims Act, which impose criminal and civil penalties, including civil whistleblower or qui tam actions, against individuals or entities for knowingly presenting, or causing to be presented, to the federal government, including the Medicare and Medicaid programs, claims for payment that are false or fraudulent or making a false statement to avoid, decrease or conceal an obligation to pay money to the federal government; the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which imposes criminal and civil liability for executing a scheme to defraud any healthcare benefit program or making false statements relating to healthcare matters;
- HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, or HITECH, and their respective implementing regulations, which impose obligations on covered healthcare providers, health plans, and healthcare clearinghouses, as well as their business associates that create, receive, maintain or transmit individually identifiable health information for or on behalf of a covered entity, with respect to safeguarding the privacy, security and transmission of individually identifiable health information;
- the federal Open Payments program, which requires manufacturers of drugs, devices, biologics and medical supplies for which payment is available under Medicare, Medicaid or the Children's Health Insurance Program, with specific exceptions, to report annually to the Centers for Medicare & Medicaid Services, or CMS, information related to "payments or other transfers of value" made to physicians, which is defined to include doctors, dentists, optometrists, podiatrists and chiropractors, and teaching hospitals and applicable manufacturers and applicable group purchasing organizations to report annually to CMS ownership and investment interests held by the physicians and their immediate family members. Data collection began on August 1, 2013 with requirements for manufacturers to submit reports to CMS by March 31, 2014 and 90 days after the end each subsequent calendar year. Disclosure of such information was made by CMS on a publicly available website beginning in September 2014;
- Increased Health and Human Services, OIG scrutiny on the sale of our products through specialty pharmacies by means of direct investigation or by issuance of unfavorable Opinion Letters which may curtail or hinder the sales of our products based on risk of enforcement upon ourselves or our buyers; and
- analogous state and foreign laws and regulations, such as state anti-kickback and false claims laws, which may apply to sales or marketing arrangements and claims involving healthcare items or services reimbursed by non-governmental third-party payors, including private insurers; state and foreign laws that require pharmaceutical companies to comply with the pharmaceutical industry's voluntary compliance guidelines and the relevant compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers; state and foreign laws that require drug manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; and state and foreign laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and often are not preempted by HIPAA, thus complicating compliance efforts.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations may involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case

law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, including, without limitation, damages, fines, imprisonment, exclusion from participation in government healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations, which could have a material adverse effect on our business. If any of the physicians or other healthcare providers or entities with whom we expect to do business, including our collaborators, is found not to be in compliance with applicable laws, it may be subject to criminal, civil or administrative sanctions, including exclusions from participation in government healthcare programs, which could also materially affect our business.

We have established and implemented a corporate compliance program designed to prevent, detect and correct violations of state and federal healthcare laws, including laws related to advertising and promotion of our products. Nonetheless, enforcement agencies or private plaintiffs may take the position that we are not in compliance with such requirements and, if such noncompliance is proven, the Company and, in some cases, individual employees, may be subject to significant liability, including the aforementioned administrative, civil and criminal sanctions.

We are subject to new legislation, regulatory proposals and managed care initiatives that may increase our costs of compliance and adversely affect our ability to market our products, obtain collaborators and raise capital.

In the United States and certain foreign jurisdictions, there have been, and we expect there will continue to be, a number of legislative and regulatory changes to the healthcare system. In March 2010, the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (the "PPACA" or collectively, the "ACA"), was signed into law, which substantially changed the way healthcare is financed by both governmental and private insurers in the United States. By way of example, the ACA: increased the minimum level of Medicaid rebates payable by manufacturers of brand name drugs from 15.1% to 23.1%; required collection of rebates for drugs paid by Medicaid managed care organizations; imposed a non-deductible annual fee on pharmaceutical manufacturers or importers who sell certain "branded prescription drugs" to specified federal government programs; implemented a new methodology under which rebates owed by manufacturers under the Medicaid Drug Rebate Program are calculated for drugs that are inhaled, infused, instilled, implanted, or injected; expanded the eligibility criteria for Medicaid programs; created a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and established a Center for Medicare and Medicaid Innovation ("CMMI") at the Centers for Medicare & Medicaid Services ("CMS"), to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending.

Since its enactment, there have been executive, judicial and Congressional challenges to certain aspects of the ACA, and we expect there will be additional challenges and amendments to the ACA in the future. President Trump signed several Executive Orders and other directives designed to delay the implementation of certain provisions of the ACA or otherwise circumvent some of the requirements for health insurance mandated by the ACA. Concurrently, Congress has considered legislation that would repeal or repeal and replace all or part of the ACA. While Congress has not passed comprehensive repeal legislation, several bills affecting the implementation of certain taxes under the ACA have been enacted. For example, in 2017, Congress enacted the Tax Cuts and Jobs Act, which eliminated the tax-based shared responsibility payment imposed by the ACA on certain individuals who fail to maintain qualifying health coverage for all or part of a year, a process that is commonly referred to as the "individual mandate." In addition, the Further Consolidated Appropriations Act, 2020 permanently eliminated, effective January 1, 2020, the ACA-mandated "Cadillac" tax on high-cost employer-sponsored health coverage and medical device tax and, effective January 1, 2021, it also eliminated the health insurer tax. On December 14, 2018, the U.S. District Court for the Northern District of Texas ruled that the individual mandate is a critical and inseverable feature of the ACA, and therefore, because it was repealed as part of the Tax Act, the remaining provisions of the ACA are invalid as well. On December 18, 2019, the U.S. Court of Appeals for the Fifth Circuit ruled that the individual mandate was unconstitutional and remanded the case back to the District Court to determine whether the remaining provisions of the ACA are invalid as well. On March 2, 2020, the U.S. Supreme Court reversed the Fifth Circuit's ruling, holding that the challengers lacked standing to sue and otherwise

abstaining from reaching the merits of the case. There may be other efforts to challenge, repeal, or replace the ACA. We are continuing to monitor any changes to the ACA that, in turn, may potentially impact our business in the future.

President Joseph R. Biden, Jr. signed an Executive Order on Strengthening Medicaid and the Affordable Care Act, stating his administration's intentions to reverse the actions of his predecessor and strengthen the ACA. As part of this Executive Order, the Department of Health and Human Services, United States Treasury, and the Department of Labor are directed to review all existing regulations, orders, guidance documents, policies, and agency actions to consider if they are consistent with ensuring coverage under the ACA and making high-quality healthcare affordable and accessible to Americans. We are unable to predict the likelihood of changes to the ACA or other healthcare laws which may negatively impact our profitability.

President Biden intends, as his predecessor did, to take action against drug prices which are considered "high." Such measures could be addressed in a legislative package later in 2021 or with the reauthorization of the Prescription Drug User Fee Act, or PDUFA, in 2022 as part of a package bill. Drug pricing continues to be a subject of debate at the executive and legislative levels of U.S. government and we expect to see legislation focusing on this in the coming year. The American Rescue Plan Act of 2021 signed into law by President Biden on March 14, 2021 includes a provision that will eliminate the statutory cap on rebates drug manufacturers pay to Medicaid beginning in January 2024. With the elimination of the rebate cap, manufacturers may be required to compensate states in an amount greater than what the state Medicaid programs pay for the drug.

Other legislative changes have been proposed and adopted since the ACA was enacted. These changes include aggregate reductions to Medicare payments to providers of up to 2% per fiscal year, effective April 1, 2013, which, due to subsequent legislative amendments, will stay in effect through 2030 with the exception of a temporary suspension implemented under various COVID-19 relief legislation from May 1, 2020 through December 31, 2021, unless additional congressional action is taken. Moreover, there has recently been heightened governmental scrutiny over the manner in which manufacturers set prices for their marketed products, which has resulted in several Congressional inquiries and proposed and enacted legislation designed, among other things, to bring more transparency to product pricing, to review the relationship between pricing and manufacturer patient assistance programs, and to reform government program reimbursement methodologies for pharmaceutical products. The Prescription Drug Pricing Reduction Act, or PDPRA, which was introduced in Congress in 2019, and again in 2020, proposed to, among other things, penalize pharmaceutical manufacturers for raising prices on drugs covered by Medicare Parts B and D faster than the rate of inflation, cap out-of-pocket expenses for Medicare Part D beneficiaries, and proposes several changes to how drugs are reimbursed in Medicare Part B. A similar drug pricing bill, the Elijah E. Cummings Lower Drug Costs Now Act proposes to enable direct price negotiations by the federal government for certain drugs (with the maximum price paid by Medicare capped based on an international index), requires manufacturers to offer these negotiated prices to other payors, and restricts manufacturers from raising prices on drugs covered by Medicare Parts B and D. This Act passed in the House of Representatives when it was introduced in 2019, and it has been introduced again in the 2021 term. We cannot predict whether any proposed legislation will become law and the effect of these possible changes on our business cannot be predicted at this time.

Further, the Centers for Medicare & Medicaid Services ("CMS") has significant regulatory authority to promulgate regulations and impose other compliance requirements that may increase our compliance costs and impact our ability to attain profitability and market our current products and any current or future product candidates. CMS sets coverage and reimbursement rates for Medicare and oversees the implementation of Medicaid at the state level. CMS could modify or impose coverage restrictions or modify reimbursement rates on any of our current products or any current or future product candidates in a manner that could adversely impact our business. For example, on January 8, 2021, CMS approved Tennessee's Medicaid section 1115 demonstration application, granting the state the unprecedented ability to implement a closed drug formulary without foregoing the state's entitlement to rebates under the Medicaid Drug Rebate Program. Implementation of a closed formulary could mean that our products could be excluded from coverage under Medicaid. It is unclear whether the Biden Administration will reverse or modify Tennessee's section 1115 demonstration approval.

Within CMS, CMMI, as established by the ACA, has broad authority to design, implement, and test new health care payment models that could potentially lower health care spending while maintaining quality or increase quality without increasing spending. CMMI has considered implementing models that could have a significant adverse effect on our business. For example, on November 27, 2020, CMMI finalized a mandatory Medicare Part B drug payment model that would have aligned payment for drugs with international reference prices, entitled the Most Favored Nation (MFN) Model. The MFN Model was enjoined by a Federal court on December 28, 2020 for failure to comply with rulemaking procedural requirements. It is unclear whether the Biden Administration will propose and implement the same or a similar model in future rulemaking, and we cannot predict how future regulatory actions by CMMI or any other component of CMS may impact our business.

These and other healthcare reform measures that may be adopted in the future may result in more rigorous coverage criteria and in additional downward pressure on the price that we receive for any current product or future product candidate. Any reduction in reimbursement from Medicare or other government healthcare programs may result in a similar reduction in payments from private payors. The implementation of cost containment measures or other healthcare reforms may prevent us from being able to generate revenue, attain profitability or commercialize our products. Legislative and regulatory proposals have been made to expand post-approval requirements and restrict sales and promotional activities for drugs. We cannot be sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of any current or future product candidates, if any, may be. In addition, increased Congressional scrutiny of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing testing and other requirements.

Public concern regarding the safety of any of our current or future drug products could delay or limit our ability to obtain regulatory approval, result in the inclusion of unfavorable information in our labeling, or require us to incur additional costs.

In light of widely publicized events concerning the safety risk of certain drug products, the FDA, members of Congress, the Government Accountability Office, medical professionals and the general public have raised concerns about potential drug safety issues. These events have resulted in the withdrawal of drug products, revisions to drug labeling that further limit use of the drug products, and the establishment of risk management programs. The increased attention to drug safety issues may result in a more cautious approach by the FDA in its review of data from our clinical trials. Data from clinical trials may receive greater scrutiny, particularly with respect to safety, which may make the FDA or other regulatory authorities more likely to require additional preclinical studies or clinical trials. If the FDA requires us to conduct additional preclinical studies or clinical trials prior to approving any other potential future product candidate, our ability to obtain of such product candidate will be delayed. If the FDA requires us to provide additional clinical or preclinical data following the approval of any potential future product candidate, the indications for which such product candidate is approved may be limited or there may be specific warnings or limitations on dosing, and our efforts to commercialize potential future product candidate may be otherwise adversely impacted.

If we experience delays or difficulties in the enrollment of patients in any future clinical trials, our receipt of necessary regulatory approvals could be delayed or prevented.

We may not be able to initiate any future clinical trials for any current or future product candidates if we are unable to locate and enroll a sufficient number of eligible patients to participate in these trials as required by the FDA or similar regulatory authorities outside the United States. Some of our competitors may have ongoing clinical trials for product candidates that treat the same indications as our current or potential future product candidates, and patients who would otherwise be eligible for any future clinical trials may instead enroll in clinical trials of our competitors' product candidates. Patient enrollment is affected by other factors including:

- the severity of the disease under investigation;
- the eligibility criteria for the study in question;
- the perceived risks and benefits of the product candidate under study;

- the efforts to facilitate timely enrollment in clinical trials;
- the patient referral practices of physicians;
- the ability to monitor patients adequately during and after treatment; and
- the proximity and availability of clinical trial sites for prospective patients.

Our inability to enroll a sufficient number of patients for any future clinical trials would result in significant delays and could require us to abandon any future clinical trials altogether. Enrollment delays in any future clinical trials may result in increased development costs for any current or future product candidates, which would cause the value of our company to decline and limit our ability to obtain additional financing.

We expect intense competition for our products and current or future product candidates, and new products may emerge that provide different or better therapeutic alternatives for our targeted indications.

We face, and will continue to face, competition in the development and marketing of products from academic institutions, government agencies, research institutions and biotechnology and pharmaceutical companies, including specialty and other large pharmaceutical companies, and over the counter ("OTC") companies and generic manufacturers. The dermatology competitive landscape is highly fragmented, with many mid-size and smaller companies competing in the prescription sector. Our competitors are pursuing the development and/or acquisition of pharmaceuticals, medical devices and OTC products targeting the same diseases, conditions, and indications as our products. There can be no assurance that our competitors' developments, including the development of other drug technologies and methods of preventing the incidence of disease, will not render our current products or current or future product candidates obsolete or noncompetitive.

If patents covering any of our currently marketed products expire or are successfully challenged, or when the regulatory or licensed exclusivity for our products expires or is otherwise lost, we will face increased competition from generic versions of our products. Generic versions are generally significantly less expensive than branded versions and third-party reimbursement programs may require or prefer that a generic version is used before the branded version. Accordingly, when a branded product loses market exclusivity, the product faces intense price competition from generic versions. To successfully compete for business with managed care and pharmacy benefits management organizations, we must demonstrate that our products offer medical and cost advantages when compared with other forms.

Competitive factors vary by product line and geographic area in which the products are sold. The principal methods of competition for our products include quality, efficacy, market acceptance, price, and marketing and promotional efforts. The commercial opportunity for our products and/or product future candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our in-licensed intellectual property. Many of our potential competitors have substantially greater capital resources, development resources, including personnel and technology, clinical trial and regulatory experience, expertise in the prosecution of intellectual property rights, and manufacturing, distribution, and sales and marketing than we do.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize any current or future product candidates. Our competitors may also develop drugs or products that are more effective, safe, useful and less costly than ours and may be more successful than us in manufacturing and marketing their drugs or products.

If our products do not achieve broad market acceptance, including by government and third-party payors, the revenues that we generate from sales will be limited.

The commercial success of our products or any current or future product candidates will depend upon their acceptance by the medical community and coverage and reimbursement for our products by third-party payors, including government payors. The degree of market acceptance of our products or any other potential product candidate we may develop, license or acquire will depend on a number of factors, including:

- the success of any potential clinic studies during the drug development process;

- limitations or warnings contained in the product's FDA-approved labeling;
- changes in the standard of care for the targeted indications for any current or future product candidates, which could reduce the marketing impact of any superiority claims that we could make following FDA approval;
- ability to be listed on formularies (lists of recommended or approved medicines and other products) and reimbursement lists by demonstrating the qualities and treatment benefits of our products within their approved indications; and
- potential advantages over, and availability of, alternative treatments.

Our ability to effectively promote and sell our products and any other current or future product candidates we may develop, license or acquire in the marketplace will also depend on pricing and cost effectiveness, including our ability to produce a product at a competitive price and achieve acceptance of the product onto formularies, as well as our ability to obtain sufficient third-party coverage or reimbursement. Since many insurance plans are members of group purchasing organizations, which leverage the purchasing power of a group of entities to obtain discounts based on the collective buying power of the group, our ability to attract customers in the marketplace will also depend on our ability to effectively promote any current or future product candidates to group purchasing organizations. We will also need to demonstrate acceptable evidence of safety and efficacy, as well as relative convenience and ease of administration. Market acceptance could be further limited depending on the prevalence and severity of any expected or unexpected adverse side effects associated with any current or future product candidates. If any current or future product candidates are approved but do not achieve an adequate level of acceptance by physicians, health care payors and patients, we may not generate sufficient revenue from these products, and we may not become or remain profitable. In addition, our efforts to educate the medical community and third-party payors on the benefits of any current or future product candidates may require significant resources and may never be successful.

Further, in both domestic and foreign markets, our any future product sales will depend in part upon the availability of coverage and reimbursement from third-party payors. Such third-party payors include government health programs such as Medicare, managed care providers, private health insurers and other organizations. We may need to conduct post-marketing studies in order to demonstrate the cost-effectiveness of any future products to the satisfaction of target customers and their third-party payors. Such studies might require us to commit a significant amount of management time and financial and other resources. Our current or future products might not ultimately be considered cost-effective. Adequate third-party coverage and reimbursement might not be available to enable us to maintain price levels sufficient to realize an appropriate return on investment in product development.

Risks Related to Our Reliance on Third Parties

The following are risks relating to our use of third-party vendors to execute parts of our business plan; however, we also rely on Fortress for many of our operational needs. See "— *Risks Related to our Relationship with Fortress Biotech, Inc.*"

If we are unable to maintain sales, marketing, and distribution capabilities, or to enter into agreements with third parties to market and sell current or future product candidates, we may not be successful in generating revenues from selling and commercializing any such product candidates.

In order to commercialize any current or future product candidates that have not yet received marketing approval, we may need to build additional marketing, sales, distribution, managerial and other non-technical capabilities or make arrangements with third parties to perform these services tailored to those products, and we may not be successful in doing so. In the event of successful development and regulatory approval of any potential new product candidate, we expect to build a targeted specialist field sales force to market or co-promote that specific product. There are risks involved with establishing our own sales, marketing and distribution capabilities. For example, recruiting and training a field sales force is expensive and time consuming and could delay any product launch. If the commercial launch of a future product candidate for which we recruit a field sales force and establish marketing capabilities is delayed or does

not occur for any reason, we would have prematurely or unnecessarily incurred these commercialization expenses. This may be costly, and our investment would be lost if we cannot retain or reposition our sales and marketing personnel.

Factors that may inhibit our efforts to maintain our current products' marketing and sales organizations and/or commercialize any future products on our own include:

- our inability to recruit, train and retain adequate numbers of effective sales and marketing personnel;
- the inability of sales personnel to obtain access to physicians and other healthcare providers or persuade adequate numbers of physicians and other healthcare providers to prescribe any future products;
- the lack of complementary or other products to be offered by sales personnel, which may put us at a competitive disadvantage from the perspective of sales efficiency relative to companies with more extensive product lines; and
- unforeseen costs and expenses associated with creating an independent sales and marketing organization.

We are dependent on third parties to supply raw materials used in our products, to manufacture our products, and to provide services for certain core aspects of our business. Any interruption or failure by these suppliers, distributors, and collaboration partners to meet their contractual obligations to us or obligations pursuant to applicable laws and regulations may materially adversely affect our business, financial condition, results of operations and cash flows.

We rely on third parties to supply raw materials, to manufacture, warehouse, and distribute our products, as well as to provide customer service support, medical affairs services, clinical studies, sales, and other technical and financial services. All third-party suppliers and contractors are subject to FDA requirements, as well as those of comparable regulatory authorities. Our business and financial viability are dependent on the continued supply of goods and services by these third parties, the regulatory compliance of these third parties and on the strength, validity and terms of our various contracts with these third parties. Any interruption or failure by our suppliers, distributors and collaboration partners to meet their obligations pursuant to various agreements with us on schedule or in accordance with our expectations, misappropriation of our proprietary information, including trade secrets and know-how, or any termination by these third parties of their arrangements with us, which, in each case, could be the result of one or many factors outside of our control, could delay or prevent the future development, future approval, manufacture or commercialization of our products, result in non-compliance with applicable laws and regulations, cause us to incur failure-to-supply penalties with our wholesale customers, disrupt our operations or cause reputational harm to our company, any or all of which could have a material adverse effect on our business, financial condition, results of operations and cash flows. We may also be unsuccessful in resolving any underlying issues with such suppliers, distributors and partners or replacing them within a reasonable time and on commercially reasonable terms.

We do not expect to have the resources or capacity to commercially manufacture any future approved product candidates ourselves. We will likely continue to be heavily dependent upon third-party manufacturers, over whose manufacturing practices and processes we will have oversight, but not direct control, which may adversely affect our ability to develop and commercialize products in a timely or cost-effective manner, if at all. If any of our third-party manufacturers should become unavailable to us for any reason, including as a result of capacity constraints, differing priorities, financial difficulties or insolvency, we would likely incur added costs and delays in identifying or qualifying replacements. We may be unable to establish agreements with such replacement manufacturers or to do so on terms acceptable to us, and our reputation, business, financial condition and results of operations could be negatively impacted.

The pharmaceutical manufacturing process requires significant expertise and capital investment, including the development of advanced manufacturing techniques and process controls, and the use of specialized processing equipment. Further, the CMOs with which we contract must comply with strictly enforced federal, state, and foreign regulations, including the cGMP requirements enforced by the FDA. We will rely on our CMOs to comply with all such regulatory requirements, including cGMP requirements,

and failure to do so may result in fines and civil penalties, suspension of production, suspension, delay, or withdrawal of product approval, product seizure or recall, and may limit the availability of our product. Any manufacturing defect or error discovered after products have been produced and distributed could result in costly recall procedures, re-stocking costs, damage to our reputation and potential for product liability claims. The FDA would likely hold us ultimately responsible for any product our CMO manufactures and regulatory enforcement for failure to meet FDA requirements would impact both the CMO and ourselves. The FDA considers the owners of drug products to be ultimately responsible for their products, even where a CMO or other third-party manufacturer fails to meet FDA requirements specific to manufacturing activities. Despite the fact that we have limited oversight, and no direct control over these manufacturing activities, any failure by a CMO to meet the requirements of the regulations would have an adverse impact on both the CMO and ourselves.

We also may rely on third-party manufacturers to purchase from third-party suppliers the materials necessary to produce our current or future product candidates for anticipated clinical trials. There are a small number of suppliers for certain capital equipment and raw materials that are used to manufacture those products. We do not have any control over the process or timing of the acquisition of these raw materials by our third-party manufacturers. Moreover, we currently do not have any agreements for the commercial production of these raw materials. Any significant delay in the supply of raw material components related to an ongoing clinical trial could considerably delay completion of our clinical trials, product testing and potential regulatory approval.

We rely, and expect to continue to rely, on third parties to conduct any future preclinical studies and clinical trials, and those third parties may not perform satisfactorily, including by failing to meet deadlines for the completion of such trials or to comply with applicable regulatory requirements.

We expect to rely on third-party contract and clinical research organizations, clinical data management organizations, and medical institutions and clinical investigators to conduct future preclinical studies and clinical trials. Any future agreements with these third parties might terminate for a variety of reasons, including a failure to perform by the third parties. If we need to enter into alternative arrangements, that could delay any future product development activities.

Our reliance on any third parties for research and development activities will reduce our own control over these activities but will not relieve us of our responsibilities. We will remain responsible for ensuring that each of any future preclinical studies and clinical trials are conducted in accordance with the general investigational plan and protocols for the trial and for ensuring that any future preclinical studies are conducted in accordance with good laboratory practice ("GLP") as appropriate. Moreover, the FDA requires us to comply with standards, commonly referred to as good clinical practices ("GCPs") for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Regulatory authorities enforce these requirements through periodic inspections of trial sponsors, clinical investigators and trial sites. If we or any of our future clinical research organizations fail to comply with applicable GCPs, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or comparable foreign regulatory authorities may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that any such regulatory authority, upon inspection of any future clinical trial, will determine that such clinical trial complies with cGMP regulations. In addition, any future clinical trials must be conducted with product produced under cGMP regulations and subject to an IND. Our failure to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process. We also are required to register ongoing clinical trials and post the results of completed clinical trials on a government-sponsored database, ClinicalTrials.gov, within specified timeframes. Failure to do so can result in fines, adverse publicity and civil and criminal sanctions.

The third parties with whom we may contract to help perform future preclinical studies or clinical trials may also have relationships with other entities, some of which may be our competitors. If these third parties do not successfully carry out their contractual duties, meet expected deadlines or conduct our preclinical studies or clinical trials in accordance with regulatory requirements or our stated protocols, we will not be able to obtain, or may be delayed in obtaining, marketing approvals for any current or future product candidates and will not be able to, or may be delayed in our efforts to, successfully commercialize such product candidates.

If any of our future relationships with these third-party contract research organizations or clinical research organizations terminate, we may not be able to enter into arrangements with alternative contract research organizations or clinical research organizations or to do so on commercially reasonable terms. Switching or adding additional contract research organizations or clinical research organizations involves additional cost and requires management time and focus. In addition, there is a natural transition period when a new contract research organization or clinical research organization commences work. As a result, delays could occur, which could compromise our ability to meet our desired development timelines. Though we will carefully manage any future relationships with contract research organizations or clinical research organizations, there can be no assurance that we will not encounter similar challenges or delays in the future.

We rely on clinical data and results obtained by third parties that could ultimately prove to be inaccurate or unreliable.

As part of our strategy to mitigate development risk, we intend on developing product candidates with validated mechanisms of action and assess potential clinical efficacy early in the development process. This strategy necessarily relies upon clinical data and other results obtained by third parties that may ultimately prove to be inaccurate or unreliable. If the third-party data and results we rely upon prove to be inaccurate, unreliable or not applicable to future product candidates, we could make inaccurate assumptions and conclusions about current or future product candidates and our research and development efforts could be compromised.

If successful products liability claims are brought against us, we may incur substantial liability, and may have to limit the commercialization of certain current or future products or product candidates.

The use of our products and any current or future product candidate we may license or acquire in clinical trials and the sale of any products for which we obtain marketing approval expose us to the risk of product liability claims. For example, we may be used if any product or product candidate we develop or sell allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing, or sale. Product liability claims might be brought against us by consumers, health care providers or others who use, administer, or sell our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- termination of clinical trial sites or entire trial programs or withdrawal of clinical trial participants;
- regulatory investigations by governmental authorities related to regulatory issues or alleged non-compliances;
- litigation costs and potential monetary awards to patients or other claimants;
- harm to our reputation and/or decreased demand for our products and corresponding revenue loss;
- reduced resources of our management to pursue our business strategy; and
- the inability to commercialize our current products or any current or future product candidates.

We have obtained or will obtain limited product liability insurance coverage for any and all current or future clinical trials. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. Our current insurance coverage includes the sale of commercial products, but we may be unable to maintain or obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

We began marketing and promoting Accutane®, an isotretinoin product in the second quarter of 2021. Isotretinoin has a black box warning for use in pregnant women. Isotretinoin also has warnings for side effects related to psychiatric disorders and inflammatory bowel disease, among others. Historically, isotretinoin has been the subject of significant product liability claims, mainly related to irritable bowel disease. Currently,

there is no significant isotretinoin product liability litigation. In 2014, the federal multi-district litigation ("MDL") court ruled that the warning label for isotretinoin was adequate and dismissed all remaining federal isotretinoin cases. The MDL dissolved in 2015, effectively ending federal isotretinoin lawsuits. Isotretinoin cases continued in New Jersey state court until 2017, when the trial court judge dismissed the remaining isotretinoin product liability cases. Accordingly, we have substantial defenses should a product liability claim arise related to isotretinoin. However, we cannot predict the ultimate outcome of any litigation and the Company may be required to pay significant amounts as a result of settlement or judgments should any new product liability claim be brought.

If we fail to comply with environmental, health and safety laws and regulations, we could become subject to fines or penalties or incur costs that could harm our business.

We are subject to numerous environmental, health and safety laws and regulations, including those governing laboratory procedures and the handling, use, storage, treatment and disposal of hazardous materials and wastes. Our operations involve the use of hazardous and flammable materials, including chemicals and biological materials. Our operations also produce hazardous waste products. We generally contract with third parties for the disposal of these materials and wastes. We cannot eliminate the risk of contamination or injury from these materials. Although we believe that the safety procedures for handling and disposing of these materials comply with the standards prescribed by these laws and regulations, we cannot eliminate the risk of accidental contamination or injury from these materials. In the event of contamination or injury resulting from our use of hazardous materials, we could be held liable for any resulting damages, and any liability could exceed our resources. We also could incur significant costs associated with civil or criminal fines and penalties for failure to comply with such laws and regulations.

Although we maintain workers' compensation insurance to cover us for costs and expenses we may incur due to injuries to our employees resulting from the use of hazardous materials, this insurance may not provide adequate coverage against potential liabilities. We do not maintain insurance for environmental liability or toxic tort claims that may be asserted against us in connection with our storage or disposal of biological, hazardous or radioactive materials.

In addition, we may incur substantial costs in order to comply with current or future environmental, health and safety laws and regulations. These current or future laws and regulations may impair our research, development or production efforts. Our failure to comply with these laws and regulations also may result in substantial fines, penalties or other sanctions.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. Any system failure, accident or security breach that causes interruptions in our operations could result in a material disruption of our manufacturing, sales or drug development programs. For example, the loss of clinical trial data from completed clinical trials for product candidates that we may license or acquire could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach results in a loss or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we may incur liability and the further development of future product candidate may be delayed.

Risks Related to our Growth

A significant part of our future growth may depend on our ability to identify and acquire or in-license products, and if we do not successfully identify and acquire or in-license related product candidates or integrate them into our operations, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by acquiring or in-licensing products, product candidates, businesses or technologies that we believe are a strategic fit with our focus on the dermatological marketplace. Future in-licenses or acquisitions, however, may entail numerous operational and financial risks, including:

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

We have limited resources to identify and execute the acquisition or in-licensing of third-party products, current or future product candidates, businesses, and technologies and to integrate them into our current infrastructure. As a result, we focus on research programs and product candidates that we identify for specific indications, which may cause us to forego or delay pursuit of opportunities with other product candidates or for other indications that may have greater commercial potential. Further, we may devote resources to potential acquisitions or in-licensing opportunities that are ultimately not completed or of which we do not realize the anticipated benefits. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities. Our spending on future research and development programs and product candidates for specific indications may not yield any commercially viable products. If we do not accurately evaluate the commercial potential or target market for a particular product candidate, we may relinquish valuable rights to that product candidate through collaboration, licensing or other royalty arrangements in cases in which it would have been more advantageous for us to retain sole development and commercialization rights to such product candidate.

Additionally, we may compete with larger pharmaceutical companies and other competitors for new collaborations and in-licensing opportunities. These competitors likely will have greater financial resources than we do and may have greater expertise in identifying and evaluating new opportunities.

Our operating history may make it difficult to evaluate our business and prospects as it relates to clinical trials or regulatory approvals.

We were incorporated in October 2014 and have only been conducting commercial operations with respect to our products since 2015. We have not yet demonstrated an ability to successfully complete clinical trials or obtain regulatory approvals. Consequently, any predictions about our future performance may not be as accurate as they could be if we had a history of successfully developing and commercializing future pharmaceutical products.

In addition, we may encounter unforeseen expenses, difficulties, complications, delays, and other known and unknown factors. We will need to expand our capabilities to support any future commercial activities. We may not be successful in adding such capabilities.

We expect our financial condition and operating results to continue to fluctuate from quarter to quarter and year to year due to a variety of factors, many of which are beyond our control. Accordingly, you should not rely upon the results of any past quarterly period as an indication of future operating performance.

We may not be able to manage our business effectively if we are unable to attract and retain key personnel.

We may not be able to attract or retain qualified management and commercial, scientific and clinical personnel in the future due to the intense competition for qualified personnel among biotechnology,

pharmaceutical and other businesses. If we are not able to attract and retain necessary personnel to accomplish our business objectives, we may experience constraints that will significantly impede the achievement of our development objectives, our ability to raise additional capital and our ability to implement our business strategy.

We may decide to sell assets, which could adversely affect our prospects and opportunities for growth.

We may from time to time consider selling certain assets if we determine that such assets are not critical to our strategy or we believe the opportunity to monetize the asset is attractive or for various other reasons, including for the reduction of indebtedness. Although our expectation is to engage in asset sales only if they advance or otherwise support our overall strategy, we may be forced to sell assets in response to liquidation or other claims described herein, and any such sale could reduce the size or scope of our business, our market share in particular markets or our opportunities with respect to certain markets, products or therapeutic categories. As a result, any such sale could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Risks Related to Development and Regulatory Approval of Our Product Candidates (DFD-29)

Our business is dependent on the successful development and regulatory approval of our current and any future product candidates.

As of June 30, 2021, our major marketed products, which have been approved by the U.S. Food and Drug Administration ("FDA") for sale in the United States, include Qbrexza®, Accutane®, Targadox®, Ximino®, and Exelderm® Cream and Solution. However, our business remains dependent on the successful development and regulatory approval of additional product candidates.

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with Dr. Reddy's Laboratories, Ltd. ("DRL") to initiate a Phase III clinical development program for a collaborative product candidate, DFD-29, that is being evaluated for the treatment of inflammatory lesions of rosacea. The success of our business, including our ability to finance our company and generate additional revenue in the future, may depend on the successful development and regulatory approval of the DFD-29 product candidate and any future product candidates that we may develop, in-license or acquire. The clinical success of our current and any future product candidates will depend on a number of factors, including the following:

- the ability to raise additional capital on acceptable terms, or at all;
- timely completion of our clinical trials, which may be significantly slower or cost more than we currently anticipate and will depend substantially upon the performance of third-party contractors as well as our ability to timely recruit and enroll patients in our clinical trials, which may be delayed due to numerous factors, including the prevalence of other companies' clinical trials for their product candidates for the same or similar indications;
- whether we are required by the FDA or similar foreign regulatory agencies to conduct additional clinical trials or other studies beyond those planned to support the approval and commercialization of our current or any future product candidates;
- acceptance of our proposed indications and primary endpoint assessments relating to the proposed indications of our current or any future product candidates by the FDA and similar foreign regulatory authorities;
- our ability to demonstrate to the satisfaction of the FDA and similar foreign regulatory authorities the safety, efficacy and acceptable risk to benefit profile of our current or any future product candidates;
- the prevalence, duration and severity of potential side effects experienced with our current or any future product candidates;
- the timely receipt of necessary marketing approvals from the FDA and similar foreign regulatory authorities;

- achieving and maintaining, and, where applicable, ensuring that our third-party contractors achieve and maintain, compliance with our contractual obligations and with all regulatory requirements applicable to our current or any future product candidates;
- our ability to successfully obtain the substances and materials used in our current or any future product candidates from third parties and to have finished products manufactured by third parties in accordance with regulatory requirements and in sufficient quantities for preclinical and clinical testing;
- the ability of third parties with whom we contract to manufacture clinical trial supplies of our current or any future product candidates, remain in good standing with regulatory agencies and develop, validate and maintain commercially viable manufacturing processes that are compliant with cGMP; and
- a continued acceptable safety profile during clinical development of our current or any future product candidates.

If we do not achieve one or more of these factors, many of which are beyond our control, in a timely manner or at all, we could experience significant delays or an inability to successfully complete and obtain regulatory approvals of our current or any future product candidates.

Clinical drug development is very expensive, time-consuming and uncertain. Our clinical trials may fail to adequately demonstrate the safety and efficacy of our current or any future product candidates, which could prevent or delay regulatory approval and commercialization.

Clinical drug development is very expensive, time-consuming and difficult to design and implement, and its outcome is inherently uncertain. Before obtaining regulatory approval for the commercial sale of a product candidate, we must demonstrate through clinical trials that a product candidate is both safe and effective for use in the target indication. Most product candidates that commence clinical trials are never approved by regulatory authorities for commercialization. The clinical trials for these product candidates may take significantly longer than expected to complete. In addition, we, any partner with which we currently or may in the future collaborate, the FDA, an institutional review board ("IRB") or other regulatory authorities, including state and local agencies and counterpart agencies in foreign countries, may suspend, delay, require modifications to or terminate our clinical trials at any time, for various reasons, including:

- discovery of serious or unexpected adverse events, toxicities, or side effects experienced by study participants or other safety issues;
- lack of effectiveness of any product candidate during clinical trials or the failure of a product candidate to meet specified endpoints;
- slower than expected rates of subject recruitment and patient enrollment in clinical trials resulting from numerous factors, including the prevalence of other companies' clinical trials for their product candidates for the same indication, such as atopic dermatitis;
- difficulty in retaining subjects who have initiated participation in a clinical trial but may withdraw at any time due to adverse side effects from the therapy, insufficient efficacy, fatigue with the clinical trial process or for any other reason;
- difficulty in obtaining IRB approval for studies to be conducted at each site;
- delays in manufacturing or obtaining, or inability to manufacture or obtain, sufficient quantities of materials for use in clinical trials;
- inadequacy of or changes in our manufacturing process or the product formulation or method of delivery;
- changes in applicable laws, regulations and regulatory policies;
- delays or failure in reaching agreement on acceptable terms in clinical trial contracts or protocols with prospective contract research organizations ("CROs"), clinical trial sites and other third-party contractors;

- inability to add a sufficient number of clinical trial sites;
- uncertainty regarding proper dosing;
- failure of our CROs or other third-party contractors to comply with contractual and regulatory requirements or to perform their services in a timely or acceptable manner;
- failure by us, our employees, our CROs or their employees or any partner with which we may collaborate or their employees to comply with applicable FDA or other regulatory requirements relating to the conduct of clinical trials or the handling, storage, security and recordkeeping for drug and biologic products;
- scheduling conflicts with participating clinicians and clinical institutions;
- failure to design appropriate clinical trial protocols;
- inability or unwillingness of medical investigators to follow our clinical protocols;
- difficulty in maintaining contact with subjects during or after treatment, which may result in incomplete data; or
- insufficient data to support regulatory approval.

We or any partner with which we may collaborate may suffer significant setbacks in our clinical trials similar to the experience of a number of other companies in the pharmaceutical and biotechnology industries, even after receiving promising results in earlier trials. In the event that we or our potential partners abandon or are delayed in the clinical development efforts related to our current or any future product candidates, we may not be able to execute on our business plan effectively and our business, financial condition, operating results and prospects would be harmed.

We expect to rely on third-party CROs and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process for our product candidates. If these third parties do not meet our requirements, conduct the trials as required or otherwise provide services as anticipated, we may not be able to satisfy our contractual obligations or obtain regulatory approval for, or successfully commercialize, our current or any future product candidates when expected or at all.

We expect to rely on third-party CROs and other third parties to conduct and oversee our clinical trials, other aspects of our product development and our regulatory submission process. We will also rely upon various medical institutions, clinical investigators and contract laboratories to conduct our trials in accordance with our clinical protocols and all applicable regulatory requirements, including the FDA's regulations and GCPs, which are meant to protect the rights, integrity, and confidentiality of study subjects and to define the roles of clinical trial sponsors, administrators and monitors, and state regulations governing the handling, storage, security and recordkeeping for drug and biologic products. These CROs and other third parties play a significant role in the conduct of our clinical trials, the subsequent collection and analysis of data from the clinical trials, the preparation for and submission of our filings with the FDA and comparable foreign regulatory authorities and the successful commercialization of our product.

We rely heavily on third parties for the execution of our clinical trials and preclinical studies, and control only certain aspects of their activities. We and our CROs and other third-party contractors are required to comply with GCP and good laboratory practice ("GLP") requirements, which are regulations and guidelines enforced by the FDA and comparable foreign regulatory authorities for products in clinical development. Regulatory authorities enforce these GCP and GLP requirements through periodic inspections of trial sponsors, principal investigators and trial sites. If we or any of these third parties fail to comply with applicable GCP and GLP requirements, the clinical data generated in our clinical trials may be deemed unreliable and the FDA or other regulatory authorities may not accept or data, or may require us to perform additional clinical trials before approving our or our partners' marketing applications. We cannot provide assurances that upon inspection by a given regulatory authority, such regulatory authority will determine that any of our clinical trials or preclinical studies complies with applicable GCP and GLP requirements. In addition, our clinical trials must generally be conducted with products manufactured and produced under cGMP regulations. Our failure to comply with these regulations and policies may require us to repeat clinical trials, which would delay the regulatory approval process.

If any of our CROs or clinical trial sites terminate their involvement in our clinical trials for any reason, we may not be able to enter into arrangements with alternative CROs or clinical trial sites in a timely manner, or do so on commercially reasonable terms or at all. In addition, if our relationship with clinical trial sites is terminated, we may experience the loss of follow-up information on patients enrolled in our ongoing clinical trial unless we are able to transfer the care of those patients to another qualified clinical trial site. In addition, principal investigators for our clinical trials may serve as scientific advisors or consultants to us from time to time and could receive cash compensation in connection with such services. If these relationships and any related compensation result in perceived or actual conflicts of interest, the integrity of the data generated at the applicable clinical trial site may be questioned by the FDA and comparable foreign regulatory authorities.

Additionally, the regulatory submission process for a product candidate is complex. We expect to rely on a third-party service provider for the preparation and submission of filings with the FDA and comparable foreign regulatory authorities for approval of our current and any future product candidates. If our relationship with such service provider is terminated prior to completion of our regulatory submission process, we may not be able to enter into an arrangement with an alternative service provider in a timely manner, or do so on commercially reasonable terms, and our submission may be substantially delayed.

We are currently dependent on DRL for the manufacture and clinical supply of DFD-29 drug product. Any interruption in our supply may cause serious delays in the timing of our clinical trials, increase our costs and adversely impact our financial results.

Pursuant to the terms of our agreement with DRL for the exclusive, worldwide rights to develop and commercialize DFD-29 for the evaluation of treatment, among other potential indications, inflammatory lesions of rosacea (the "DFD-29 Agreement"), DRL is responsible for the manufacture and supply to us of DFD-29 drug product and we are completely reliant upon DRL to provide us with adequate supply for our use. We may experience an interruption in supply if, among other reasons, we incorrectly forecast our supply requirements, DRL allocates supply to its own development programs, DRL incorrectly plans its manufacturing production or DRL is unable to manufacture DFD-29 drug product in a timely manner to match our development or commercial needs. Transferring technology to a new manufacturer will require additional processes, technologies and validation studies, which are costly, may take considerable amounts of time, may not be successful and require review and approval by the FDA and applicable foreign regulatory bodies. Such manufacturer must comply with cGMP requirements enforced by the FDA and applicable foreign regulatory bodies through facilities inspection programs and review of submitted technical information.

We may be unable to obtain regulatory approval for our current or any of our future product candidates under applicable regulatory requirements. The FDA and foreign regulatory bodies have substantial discretion in the approval process, including the ability to delay, limit or deny approval of product candidates. The delay, limitation or denial of any regulatory approval would adversely impact our business and our operating results.

We may never obtain regulatory approval to commercialize our current or any future product candidates. The research, testing, manufacturing, safety surveillance, efficacy, quality control, recordkeeping, labeling, packaging, storage, approval, sale, marketing, distribution, import, export and reporting of safety and other post-market information related to our current and any future product candidates are subject to extensive regulation by the FDA and other regulatory authorities in the United States and in foreign countries, and such regulations differ from country to country. We are not permitted to market any of our current or any future product candidates in the United States until we receive approval of an NDA, BLA or other applicable regulatory filing from the FDA. We are also not permitted to market our product or our current or any future product candidates in any foreign countries until we receive the requisite approval from the applicable regulatory authorities of such countries.

To gain approval to market a new drug, the FDA and foreign regulatory authorities must receive preclinical, clinical and chemistry, manufacturing and controls data that adequately demonstrate the safety, purity, potency, efficacy and compliant manufacturing of the product for the intended indication applied for in an NDA, BLA or other applicable regulatory filing. The development and approval of new drug products and biologic products involves a long, expensive and uncertain process. A delay or failure can occur at any stage in the process. A number of companies in the pharmaceutical and biopharmaceutical industry

have suffered significant setbacks in clinical trials, including in Phase 3 clinical development, even after promising results in earlier preclinical studies or clinical trials. These setbacks have been caused by, among other things, findings made while clinical trials were underway and safety or efficacy observations made in clinical trials, including previously unreported adverse events. Success in preclinical testing and early clinical trials does not ensure that later clinical trials will be successful, and the results of clinical trials by other parties may not be indicative of the results in trials we or our partners may conduct.

The FDA and foreign regulatory bodies have substantial discretion in the drug approval process, including the ability to delay, limit or deny approval of product candidates for many reasons, including:

- the FDA or the applicable foreign regulatory body may disagree with the design, implementation, choice of dose, analysis plans or interpretation of the outcome of one or more clinical trials;
- the FDA or the applicable foreign regulatory body may not deem a product candidate safe and effective for its proposed indication, or may deem a product candidate's safety or other perceived risks to outweigh its clinical or other benefits;
- the FDA or the applicable foreign regulatory body may not find the data from preclinical studies and clinical trials, including the number of subjects in the safety database, sufficient to support approval, or the results of clinical trials may not meet the level of statistical or clinical significance required by the FDA or the applicable foreign regulatory body for approval;
- the FDA or the applicable foreign regulatory body may disagree with our interpretation of data from preclinical studies or clinical trials performed by us or third parties, or with the interpretation of any partner with which we may collaborate;
- the data collected from clinical trials may not be sufficient to support the submission and approval of an NDA, BLA or other applicable regulatory filing;
- the FDA or the applicable foreign regulatory body may require additional preclinical studies or clinical trials;
- the FDA or the applicable foreign regulatory agency may identify deficiencies in the formulation, manufacturing, quality control, labeling or specifications of our current or any future product candidates;
- the FDA or the applicable foreign regulatory agency may require clinical trials in pediatric patients in order to establish pharmacokinetics or safety for this more drug-sensitive population;
- the FDA or the applicable foreign regulatory agency may grant approval contingent on the performance of costly additional post-approval clinical trials;
- the FDA or the applicable foreign regulatory agency may grant approval but impose substantial and costly post-approval requirements;
- the FDA or the applicable foreign regulatory agency may approve our current or any future product candidates for a more limited indication or a narrower patient population than we originally requested;
- the FDA or applicable foreign regulatory agency may not approve the labeling that we believe is necessary or desirable for the successful commercialization of our current or any future product candidates;
- the FDA or the applicable foreign regulatory body may not approve of the manufacturing processes, controls or facilities of third-party manufacturers or testing labs with which we contract; or
- the FDA or the applicable foreign regulatory body may change its approval policies or adopt new regulations in a manner rendering our clinical data or regulatory filings insufficient for approval.

Of the large number of drugs and biologics in development, only a small percentage successfully complete the FDA or other regulatory approval processes and are commercialized. Our current and any future product candidates may not be approved by the FDA or applicable foreign regulatory agencies even though they meet specified endpoints in our clinical trials. The FDA or applicable foreign regulatory agencies may ask us to conduct additional costly and time-consuming clinical trials in order to obtain marketing

approval or approval to enter into an advanced phase of development, or may change the requirements for approval even after such agency has reviewed and commented on the design for the clinical trials. Any delay in obtaining, or inability to obtain, applicable regulatory approval for any of our product candidates would delay or prevent commercialization of our current and any future product candidates and would harm our business, financial condition, operating results and prospects.

We may conduct clinical trials for our current and any future product candidates, in whole or in part, outside of the United States and the FDA and applicable foreign regulatory authorities may not accept data from such trials, which would likely result in additional costs to us and delay our business plan.

We may in the future choose to conduct, one or more of our clinical trials outside the United States. Although the FDA or applicable foreign regulatory authority may accept data from clinical trials conducted outside the United States or the applicable jurisdiction, acceptance of such study data by the FDA or applicable foreign regulatory authority may be subject to certain conditions. Where data from foreign clinical trials are intended to serve as the basis for marketing approval in the United States, the FDA will not approve the application on the basis of foreign data alone unless those data are applicable to the U.S. population and U.S. medical practice; the studies were performed by clinical investigators of recognized competence; and the data are considered valid without the need for an on-site inspection by the FDA or, if the FDA considers such an inspection to be necessary, the FDA is able to validate the data through an on-site inspection or other appropriate means. Many foreign regulatory bodies have similar requirements. In addition, such foreign studies would be subject to the applicable local laws of the foreign jurisdictions where the studies are conducted. There can be no assurance the FDA or applicable foreign regulatory authority will accept data from trials conducted outside of the United States or the applicable jurisdiction. If the FDA or applicable foreign regulatory authority does not accept such data, it would likely result in the need for additional clinical trials, which would be costly and time-consuming and delay aspects of our business plan.

Risks Related to Intellectual Property, Generic Competition and Paragraph IV Litigation

If we are unable to obtain and maintain patent protection for our technology and products or if the scope of the patent protection obtained is not sufficiently broad, our competitors could develop and commercialize technology and products similar or identical to ours, and our ability to successfully commercialize our technology and products may be impaired.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection in the United States and other countries with respect to our products or any current or future product candidates that we may license or acquire and our manufacturing methods, as well as successfully defending these patents and trade secrets against third-party challenges, which is expensive and time-consuming. A patent is the grant of a property right which allows its holder to exclude others from, among other things, selling the subject invention in, or importing such invention into, the jurisdiction that granted the patent. We have obtained, acquired or in-licensed a number of patents and patent applications covering key aspects of certain of our principal products. In the aggregate, our patents are of material importance to our business taken as a whole. We seek to protect our proprietary position by filing or obtaining licenses under patent applications in the United States and abroad related to our products and any other current or future product candidates. We will only be able to protect our technologies from unauthorized use by third parties to the extent that valid and enforceable patents cover them. Our success is predicated, in part, by our ability to maintain the integrity of our trade secrets.

It is possible that we or our licensors will fail to timely identify patentable aspects of our research and development output before it is too late to obtain patent protection, which may result in third parties using our proprietary information, impairing our abilities to compete in the market, to generate revenues, and to achieve profitability. Moreover, should we enter into other collaborations, we may be required to consult with or cede control to collaborators regarding the prosecution, maintenance and enforcement of our patents. Therefore, such patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. The patent prosecution process is expensive and time-consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner.

The patent position of biotechnology and pharmaceutical companies generally is highly uncertain, involves complex legal and factual questions and has in recent years been the subject of much litigation. In addition, no consistent policy regarding the breadth of claims allowed in pharmaceutical or biotechnology patents has emerged to date in the U.S. The patent situation outside the U.S. is even more uncertain. The laws of foreign countries may not protect our rights to the same extent as the laws of the United States. For example, European patent law restricts the patentability of methods of treatment of the human body more than United States law does. Publications of discoveries in the scientific literature often lag behind the actual discoveries, and patent applications in the United States and other jurisdictions are typically not published until eighteen (18) months after a first filing, if at all. Therefore, we cannot know with certainty whether we or our licensors were the first to make the inventions claimed in our owned or licensed patents or pending patent applications, or that we were the first to file for patent protection of such inventions. In the event that a third party has also filed a U.S. patent application relating to any current or future product candidates or a similar invention, we may have to participate in derivation proceedings declared by the USPTO to determine proper inventorship of a claimed invention. The costs of these proceedings could be substantial, and it is possible that our efforts would be unsuccessful, resulting in a material adverse effect on our U.S. patent position. As a result, the issuance, scope, validity, enforceability and commercial value of our patent rights are highly uncertain. Our pending and future patent applications may not result in patents being issued which protect our technology or products, in whole or in part, or which effectively prevent others from commercializing competitive technologies and products. Changes in either the patent laws or interpretation of the patent laws in the United States and other countries may diminish the value of our patents or narrow the scope of our patent protection. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents or in third-party patents.

Recent patent reform legislation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents. On September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to United States patent law. These include provisions that affect the way patent applications are prosecuted and may also affect patent litigation. The United States Patent Office recently developed new regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act, and in particular, the first-inventor-to-file provisions, only became effective on March 16, 2013. Similarly, courts continue to consider the constitutionality of certain provisions of the Leahy-Smith Act, including the Supreme Court in a recent decision affecting *inter partes* review procedures. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

Moreover, we may be subject to a third-party preissuance submission of prior art to the USPTO, or become involved in opposition, derivation, reexamination, *inter partes* review, post-grant review or other administrative proceedings challenging our patent rights or the patent rights of others. An adverse determination in any such submission, proceeding or litigation could reduce the scope of, render unenforceable, or invalidate, our patent rights, allow third parties to commercialize our technology or products and compete directly with us, without payment to us. We may also be unable to manufacture or commercialize products without infringing third-party patent rights, under which a license might not be available. In addition, if the breadth or strength of protection provided by our patents and patent applications is threatened, it could dissuade companies from collaborating with us to license, develop, or commercialize our current or future product candidates.

Even if our patent applications issue as patents, they may not issue in a form that will provide us with any meaningful protection, prevent competitors from competing with us, or otherwise provide us with any competitive advantage. Our competitors may be able to circumvent our owned or licensed patents by developing similar or alternative technologies or products in a non-infringing manner.

The issuance of a patent does not foreclose challenges to its inventorship, scope, validity or enforceability. Therefore, our owned and licensed patents may be challenged in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or in patent claims being narrowed,

invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and products. Given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such product candidates might expire before or shortly after such product candidates are commercialized. As a result, our owned and licensed patent portfolio may not provide us with sufficient rights to exclude others from commercializing products similar or identical to ours.

Generic drug approvals and successful challenges against the validity of our patents may cause us to lose exclusivity of some of our products.

In the U.S., the Hatch-Waxman Act provides non-patent regulatory exclusivity for five years from the date of the first FDA approval of a new drug compound in a New Drug Application ("NDA"). The FDA, with one exception, is prohibited during those five years from accepting for filing a generic, or an Abbreviated New Drug Application ("ANDA"), that references the NDA. In reference to the foregoing exception, if a patent is indexed in the FDA Orange Book for the new drug compound, a generic may file an ANDA four years from the NDA approval date if it also files a Paragraph IV Certification with the FDA challenging the patent. Protection under the Hatch-Waxman Act will not prevent the filing or approval of another full NDA. However, the NDA applicant would be required to conduct its own pre-clinical and adequate and well-controlled clinical trials to independently demonstrate safety and effectiveness.

Generic drug companies may submit applications seeking approval to market generic versions of our products. In connection with these applications, generic drug companies may seek to challenge the validity and enforceability of our patents through litigation and/or with the USPTO. Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings), such as the Paragraph IV certification made by Perrigo pertaining to the patents covering Qbrexza. See "Bus*iness — Legal Proceedings*." Such challenges may subject us to costly and time-consuming litigation and/or USPTO proceedings. As a result of the loss of any patent protection from such litigation or USPTO proceedings, or the "at-risk" launch by a generic competitor of our products, our products could be sold at significantly lower prices, and we could lose a significant portion of sales of that product in a short period of time, which could adversely affect our business, financial condition, operating results and prospects.

Enforcing our proprietary rights is difficult and costly and we may be unable to ensure their protection.

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

- our licensors might not have been the first to make the inventions covered by each of our pending patent applications and issued patents;
- our licensors might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative technologies or duplicate our products or our current or future product candidates' technologies;
- it is possible that none of the pending patent applications licensed to us will result in issued patents;
- the issued patents covering our products or any current or future product candidates may not provide a basis for commercially viable active products, may not provide us with any competitive advantages, or may be challenged and defeated by third parties;
- we may not develop additional proprietary technologies that are patentable; or
- patent rights of others may have an adverse effect on our business.

Furthermore, competitors may infringe our issued patents or other intellectual property (collectively, our "IP"), which may require us to file infringement claims, which is expensive and time consuming, and the outcome uncertain. Any claims we assert against perceived infringers could provoke counterclaims alleging that our IP rights are invalid, unenforceable, or not infringed or that we have infringed upon misappropriated others' intellectual property. In response, a court may decide that a patent of ours is wholly

or partially invalid or unenforceable, construe the patent's claims narrowly, or refuse to stop the accused party from using the technology at issue.

Additionally, some of our products do not have patent protection because they are not eligible or qualify for such protection. This creates greater risk of competition with generic drug manufacturers and may otherwise adversely affect our business or result of operations.

Further, we rely on trade secrets, including unpatented know-how, to maintain our competitive position. We enter into non-disclosure and confidentiality agreements to protect these trade secrets but cannot guarantee that counterparties will not breach the agreements and disclose our proprietary information, including trade secrets. Enforcing a claim that a party illegally disclosed or misappropriated trade secrets is costly, difficult, and time consuming, and we may be unable to obtain adequate remedy. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

If we are sued for infringing intellectual property rights of third parties, it will be costly and time consuming, and an unfavorable outcome in any litigation would harm our business.

Our ability to develop, manufacture, market and sell our products or any current or future product candidates depends upon our ability to avoid infringing the proprietary rights of third parties. There are many U.S. and foreign issued patents and pending patent applications owned by third parties, in the dermatology field, which cover numerous compounds and formulations in our targeted markets. Because of the uncertainty inherent in any patent or other litigation involving proprietary rights, we and our licensors may not be successful in defending against intellectual property claims raised by third parties, which could have a material adverse effect on our results of operations. Regardless of the outcome of any litigation, defending the litigation may be expensive, time-consuming and distracting to management. In addition, because patent applications can take many years to issue, there may be currently pending applications, unknown to us, which may later result in issued patents that our commercial activities relating to our products or current or future product candidates may infringe. There could also be existing patents of which we are not aware that our products or current or future product candidates may inadvertently infringe.

There is a substantial amount of litigation involving patent and other intellectual property rights in the biotechnology and biopharmaceutical industries generally. If a third party claims that we infringe on their products or technology, in addition to costly and time-consuming litigation, we could face a number of issues, including:

- diversion of management's attention from our core business;
- substantial damages for past infringement;
- injunctions prohibiting us from selling or licensing our product unless the patent holder licenses the patent to us, which it would not be required to do;
- requirements that we pay substantial royalties or grant cross licenses under our patents;
- redesigning our processes so they do not infringe, which may not be possible or could require substantial funds and time; and
- harm to our reputation and subsequent adverse effect on the valuation of our Securities and revenue.

Intellectual property litigation could cause us to spend substantial resources and distract our personnel from their normal responsibilities.

Even if resolved in our favor, litigation or other legal proceedings relating to intellectual property claims may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the valuation of our Securities. Such litigation or proceedings could substantially increase our operating losses and reduce the resources available for development activities or any future sales, marketing or distribution activities. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately.

Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could compromise our ability to compete in the marketplace.

We may be subject to claims that our employees have wrongfully used or disclosed alleged trade secrets of their former employers.

As is common in the biotechnology and pharmaceutical industry, we employ individuals who were previously employed at other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

We may need to license certain intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property rights, including patent rights, that are important or necessary to the development of our products or current or future product candidates. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our products or current or future product candidates, in which case we would be required to obtain a license from these third parties, if available, on commercially reasonable terms, or our business could be harmed, possibly materially.

If we fail to comply with our obligations in our intellectual property licenses and funding arrangements with third parties, or if we breach an agreement under which we license rights to any product or future product candidate, we could lose rights that are important to our business.

If we fail to comply with our obligations under current or future license and funding agreements, our counterparties may have the right to terminate these agreements, in which event we might not be able to develop, manufacture, or market any product or utilize any technology that is covered by these agreements or may face other penalties under the agreements. Such an occurrence could materially and adversely affect the value of a product candidate being developed under any such agreement or could restrict our drug discovery activities. Termination of these agreements or reduction or elimination of our rights under these agreements may result in our having to negotiate new or reinstated agreements with less favorable terms or cause us to lose our rights under these agreements, including our rights to important intellectual property or technology. Further, any uncured, material breach under our license agreement with any current or future licensor could result in our loss of rights to our products or current or future product candidates and may lead to a complete termination of any future product development efforts.

Risks Related to the COVID-19 Pandemic

The COVID-19 pandemic may continue to impact our product revenues, future clinical trials, and as a result, our financial condition and results of operations and other aspects of our business.

In December 2019, a novel strain of coronavirus, which causes a disease referred to as COVID-19, was first detected in Wuhan, China and has since spread worldwide. On March 11, 2020, the World Health Organization declared that the rapidly spreading COVID-19 outbreak had evolved into a pandemic. In response to the pandemic, many governments around the world are implementing a variety of control measures to reduce the spread of COVID-19, including travel restrictions and bans, instructions to residents to practice social distancing, quarantine advisories, shelter-in-place orders and required closures of non-essential businesses.

The COVID-19 pandemic has and may continue to impact the global economy, disrupt global supply chains, and create significant volatility and disruption of financial markets.

To protect the health of our workforce, we asked our office-based employees to work remotely, have restricted domestic and international travel indefinitely, and restricted on-site staff to only those personnel and contractors who perform essential activities that must be conducted on-site. We intend to keep these precautionary measures in effect for the foreseeable future and may need to enact further measures to help minimize the risk of our employees being exposed to COVID-19. Although the impact of a remote working environment to our operations has been minimal, our continued reliance on remote work may negatively impact productivity, including our ability to generate revenues and product demand, prepare regulatory applications, and conduct data analysis, and may disrupt, delay, or otherwise adversely impact our business. In addition, continued remote working could increase our cybersecurity risk, create data accessibility concerns, and make us more susceptible to communication disruption. COVID-19 may also compromise the ability of independent contractors who perform consulting services for us to deliver services or deliverables in a satisfactory or timely manner.

Some factors from the COVID-19 outbreak that may delay or otherwise adversely affect our product revenues, as well as adversely impact our business generally, include:

- the changes in buying patterns throughout our supply chain caused by lack of normal access by patients to the healthcare system and concern about the continued supply of medications, which may increase or decrease demand for our products;
- adverse effects on our manufacturing operations, supply chain and distribution systems, which may impact our ability to produce and distribute our products, as well as the ability of third parties to fulfill their obligations to us and could increase our expenses;
- the risk of shutdown in countries where we rely, or may rely, on CMOs to provide commercial manufacture of our products, clinical batch manufacturing of our product candidates, including DFD-29, or the procurement of active pharmaceutical ingredients or other manufacturing components for our products or product candidates, which may cause delays or shortages in our product supply and/or the timing of any our clinical trials;
- the risk that the COVID-19 pandemic may intensify other risks inherent in our business; and
- the possibility that third parties on which we rely for certain functions and services, including CMOs, suppliers, distributors, logistics providers, and external business partners, may be adversely impacted by restrictions resulting from COVID-19, which could cause us to experience delays or incur additional costs.

Risks Related to Our Finances and Capital Requirements

Although we have been cash flow positive since the end of 2017, we may incur losses in the foreseeable future and may not be able to regain or maintain profitability.

Although we are a cash generating, commercial organization, we have a limited operating history. We have focused primarily on in-licensing, developing, commercializing and/or manufacturing and selling our products. Potential future losses, among other things, will have an adverse effect on our stockholders' equity and working capital. Because of the numerous risks and uncertainties associated with commercialization and/or developing pharmaceutical products, we are unable to predict the timing or amount of increased expenses or if we will be able to maintain profitability. Any future net losses may fluctuate significantly from quarter to quarter and year to year. We anticipate that our expenses will increase substantially if:

- our current or any future product candidates are approved for commercial sale, due to our ability to establish the necessary commercial infrastructure to launch this product candidate without substantial delays, including hiring sales and marketing personnel and contracting with third parties for warehousing, distribution, cash collection and related commercial activities;
- we are required by the FDA, or foreign regulatory authorities, to perform studies in addition to those currently expected;
- there are any delays in completing our clinical trials or the development of our current or any future product candidates;

- we execute other collaborative, licensing or similar arrangements and the timing of payments we may make or receive under these arrangements;
- there are variations in the level of expenses related to our future development programs;
- there are any product liability or intellectual property infringement lawsuits in which we may become involved;
- there are any regulatory developments affecting our products, current or future product candidates, or the product candidates of our competitors; and
- the level of underlying demand for our products and wholesalers' buying patterns.

Our ability to maintain profitability depends upon our ability to generate and sustain revenue. Our ability to generate and sustain revenue depends on a number of factors, including, but not limited to, our ability to:

- obtain and maintain regulatory approval for our products, or any other current or future product candidates that we may license or acquire;
- manufacture commercial quantities of our current products or current or future product candidates, if approved, at acceptable cost levels; and
- maintaining and/or expanding our commercial organization and the supporting infrastructure required to successfully market and sell our products or current or future product candidates, if approved.

Even if we do achieve sustainable profitability, we may not be able to increase profitability on a quarterly or annual basis. Our failure to remain profitable would depress our value and could impair our ability to raise capital, expand our business, maintain initiate any research and development efforts, diversify our product offerings or even continue our operations. A decline in our value could also cause you to lose all or part of your investment.

We may need additional funding and may be unable to raise capital when needed, which would force us to delay, reduce or eliminate any future product development programs or commercialization, manufacture and/or sales efforts.

Selling and developing products for dermatological use, conducting clinical trials, establishing outsourced manufacturing relationships and successfully manufacturing and marketing drugs that we may develop is expensive. We may need to raise additional capital to:

- fund our operations and continue our efforts to hire additional personnel;
- qualify and outsource the commercial-scale manufacturing of our products under cGMP; and
- in-license and develop additional product candidates.

Our future funding requirements will depend on many factors, including, but not limited to:

- the potential for delays in our efforts to seek regulatory approval for any current or future product candidates, and any costs associated with such delays;
- the costs of maintaining and/or establishing a commercial organization to sell, market and distribute our products and/or current or future product candidates;
- the rate of progress and costs of our efforts to prepare for the submission of NDA or BLA for any product candidates that we may in-license or acquire in the future, and the potential that we may need to conduct additional clinical trials to support applications for regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights associated with any current or future product candidates, including any such costs we may be required to expend if licensors are unwilling or unable to do so;
- the cost and timing of securing sufficient supplies of our products and current or future product candidates from our contract manufacturers in preparation for commercialization, manufacture, and/or sale;

- the effect of competing technological and market developments;
- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish;
- the potential that we may be required to file a lawsuit to defend our patent rights or regulatory exclusivities from challenges by companies seeking to market generic versions of intravenous synthetic opioid analgesic; and
- the success of sales efforts of our current products and/or the commercialization of any current or future product candidates.

Future capital requirements will also depend on the extent to which we acquire or invest in additional complementary businesses, products and technologies, but we currently have no commitments or agreements relating to any of these types of transactions.

We may need to finance future cash needs through public or private equity offerings, debt financings or corporate collaboration and licensing arrangements, as well as through interest income earned on cash and investment balances. We cannot be certain that additional funding will be available on acceptable terms, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of or eliminate one or more of future development programs or our future commercialization efforts.

Raising additional capital may cause dilution to our existing stockholders, restrict our operations or require us to relinquish proprietary rights.

To the extent that we raise additional capital through the sale of equity or convertible debt securities, your ownership interest will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights. Debt financing and preferred equity financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends.

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

If we fail to raise the additional funds needed to complete the development of our current products or current or future product candidates, or the funds needed to complete the development of our current or future product candidates, we will be unable to execute our current business plan.

Risks Related to this Offering and to Owning our Common Stock

If you purchase shares of our common stock in this offering, your investment will experience immediate dilution.

We expect the initial public offering price of our common stock to be substantially higher than the net tangible book value per share of our common stock following this offering based on the total value of our tangible assets less our total liabilities. Therefore, if you purchase shares of our common stock in this offering, you will pay a price per share that substantially exceeds our net tangible book value per share after this offering. Based on an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, you will experience immediate dilution of $ per share, representing the difference between our as adjusted net tangible book value per share as of , after giving effect to the issuance of shares of our common stock in this offering. To the extent current or future outstanding equity awards are settled in shares of our capital stock, you will incur further dilution. Furthermore, if the underwriters exercise their option to purchase additional shares or outstanding options are exercised, you could experience further dilution. For a further description of the dilution that you will experience immediately after this offering, see the section titled "*Dilution*."

If we fail to maintain or implement effective internal controls, we may not be able to report financial results accurately or on a timely basis, or to detect fraud, which could have a material adverse effect on our business and the per share price of our common stock.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures, and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. We are also continuing to improve our internal control over financial reporting. We have expended, and anticipate that we will continue to expend, significant resources in order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls or our internal control over financial reporting may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting could also adversely affect the results of management reports and independent registered public accounting firm audits of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures, and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the market price of our common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the Nasdaq Capital Market.

We are not currently required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley Act, and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. Upon becoming a public company, we will be required to provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report on Form 10-K. Our independent registered public accounting firm is not required to audit the effectiveness of our internal control over financial reporting until after we are no longer an "emerging growth company," as defined in the JOBS Act. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating.

Any failure to maintain effective disclosure controls and internal control over financial reporting could have a material and adverse effect on our business and operating results, and cause a decline in the market price of our common stock.

Sales of substantial blocks of our common stock into the public market after this offering, including when "lock-up" or "market standoff" periods end, or the perception that such sales might occur, could cause the market price of our common stock to decline.

Sales of substantial blocks of our common stock into the public market after this offering, including when "lock-up" or "market standoff" periods end, or the perception that such sales might occur, could cause the market price of our common stock to decline and may make it more difficult for you to sell your common stock at a time and price that you deem appropriate. All of the shares of common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act of 1933, as amended, or the Securities Act, except for any shares held by our "affiliates" as defined in Rule 144 under the Securities Act.

Subject to exceptions described in the section titled "*Underwriting*," we, all of our directors and officers and all of the other holders of our capital stock and securities convertible into, or exchangeable for, our capital stock have agreed not to offer, sell or agree to sell, directly or indirectly, any shares of common stock without the permission of the representatives of the underwriters for a period of 180 days from the date of

this prospectus. When the applicable lock-up period expires, we, our directors and officers and locked-up equityholders will be able to sell shares into the public market.

We also intend to register the offer and sale of all shares of common stock that we may issue under our equity compensation plans.

There has been no public market for our common stock prior to this offering, and an active market in which investors can resell their shares of our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. We cannot predict the extent to which an active market for our common stock will develop or be sustained after this offering, or how the development of such a market might affect the market price of our common stock. The initial offering price of our shares in this offering has been agreed to between us and the underwriters based on a number of factors, including market conditions in effect around the time of this offering, and it may not be in any way indicative of the price at which the shares of our common stock will trade following the completion of this offering. Accordingly, investors may not be able to resell their shares of our common stock at or above the initial offering price.

Our charter documents and Delaware law could discourage takeover attempts and other corporate governance changes.

Our Second Amended and Restated Certificate of Incorporation and bylaws in effect upon completion of this offering contain provisions that could delay or prevent a change in control of our Company. These provisions could also make it difficult for stockholders to elect directors that are not nominated by the current members of our board of directors or take other corporate actions, including effecting changes in our management. These provisions include certain provisions that:

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- provide that, after a removal for cause, vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum;
- prohibit cumulative voting in the election of directors;
- require majority voting to amend our certificate of incorporation and bylaws;
- authorize the issuance of "blank check" preferred stock that our board of directors could use to implement a stockholder rights plan;
- restrict the forum for certain litigation against us to Delaware or federal courts;
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings; and
- bestow majority control of the stockholder vote to Fortress by virtue of their exclusive ownership of our Class A Common Stock

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law (the "DGCL"). These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a period of time without the approval of our board of directors. In addition, our credit facility includes, and other debt instruments we may enter into in the future may include, provisions entitling the lenders to demand immediate repayment of all borrowings upon the occurrence of certain change of control events relating to our company, which also could discourage, delay or prevent a business combination transaction.

Our Second Amended and Restated Certificate of Incorporation will provide, subject to limited exceptions, that the Court of Chancery of the State of Delaware will be the sole and exclusive forum for certain stockholder litigation matters, which could limit our stockholders' ability to obtain a chosen judicial forum for disputes with us or our directors, officers, employees or stockholders.

Our Second Amended and Restated Certificate of Incorporation will require to the fullest extent permitted by law, that derivative actions brought in our name, actions against directors, officers and

employees for breach of fiduciary duty and other similar actions may be brought in the Court of Chancery in the State of Delaware or, if that court lacks subject matter jurisdiction, another federal or state court situated in the State of Delaware. Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock shall be deemed to have notice of and consented to the forum provisions in our certificate of incorporation. In addition, our Second Amended and Restated Certificate of Incorporation will provide that the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action under the Securities Act and the Exchange Act.

In March 2020, the Delaware Supreme Court issued a decision in*Salzburg et al. v. Sciabacucchi*, which found that an exclusive forum provision providing for claims under the Securities Act to be brought in federal court is facially valid under Delaware law. It is unclear whether this decision will be appealed, or what the final outcome of this case will be. We intend to enforce this provision, but we do not know whether courts in other jurisdictions will agree with this decision or enforce it.

This choice of forum provision may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or any of our directors, officers, other employees or stockholders, which may discourage lawsuits with respect to such claims. Alternatively, if a court were to find the choice of forum provision contained in our Second Amended and Restated Certificate of Incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could harm our business, operating results and financial condition.

The requirements of being a public company may strain our resources, divert our management's attention and affect our ability to attract and retain qualified board members.

As a public company, we will be subject to the reporting requirements of the Exchange Act, and will be required to comply with the applicable requirements of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of the Nasdaq Capital Market, and other applicable securities rules and regulations. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. Among other things, the Exchange Act requires that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal controls over financial reporting. Significant resources and management oversight will be required to maintain and, if required, improve our disclosure controls and procedures and internal controls over financial reporting to meet this standard. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire even more employees in the future, which will increase our costs and expenses.

We also expect that being a public company and these new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

We have broad discretion in the use of net proceeds that we receive in this offering and we may not use them effectively.

After giving effect to the use of proceeds described in "*Use of Proceeds,*" we expect to have remaining net proceeds, which we currently intend to use to pursue both development stage and commercial opportunities, as well as for commercialization expenses related to the launch of new products, development costs associated with our current development stage product, DFD-29, along with potential new development stage products, working capital, general administrative expenses, and general corporate purposes. See the section titled "*Use of Proceeds.*" We have no present commitments or agreements to enter into any acquisitions or make any investments. Our management will have broad discretion in the application of the net proceeds, including possible acquisitions of, or investments in, businesses or technologies. The failure by our management to apply these funds effectively could harm our business, operating results and financial condition.

Reduced reporting and disclosure requirements applicable to us as an emerging growth company could make our common stock less attractive to investors.

We are an EGC and, for as long as we continue to be an EGC, we may continue to avail ourselves of exemptions from various reporting requirements applicable to other public companies. Consequently, we are not required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, and we are subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, the JOBS Act provides that an EGC can take advantage of an extended transition period for complying with new or revised accounting standards. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of the dates such pronouncements are effective for public companies. We could be an EGC for up to five years following the completion of this offering. We will cease to be an EGC upon the earliest of: (i) the end of the fiscal year following the fifth anniversary of this offering, (ii) the first fiscal year after our annual gross revenue is $1.07 billion or more, (iii) the date on which we have, during the previous three-year period, issued more than $1.0 billion in nonconvertible debt securities or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded $700 million as of the end of the second quarter of that fiscal year. We cannot predict whether investors will find our common stock less attractive if we choose to rely on these exemptions. If some investors find our common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our common stock, and the price of our common stock may be more volatile.

Our shares of common stock will be subject to potential delisting if we do not continue to maintain the listing requirements of the Nasdaq Capital Market.

We have applied to list our shares of common stock on the Nasdaq Capital Market, under the symbol "DERM." Nasdaq has rules for continued listing, including, without limitation, minimum market capitalization and other requirements. Failure to maintain our listing, or de-listing from Nasdaq, would make it more difficult for shareholders to sell our securities and more difficult to obtain accurate price quotations on our securities. This could have an adverse effect on the price of our common stock. Our ability to issue additional securities for financing or other purposes, or otherwise to arrange for any financing we may need in the future, may also be materially and adversely affected if our common stock is not traded on a national securities exchange.

Because we do not anticipate paying any cash dividends on our common stock in the foreseeable future, capital appreciation, if any, will be your sole source of gains.

We currently intend to retain any earnings to finance the operation and expansion of our business, and we do not anticipate paying any cash dividends in the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our board of directors. In addition, the terms of our existing debt arrangements preclude us from paying dividends and our future debt agreements, if any, may contain similar restrictions. As a result, you may only receive a return on your investment in our common stock if the market price of our common stock increases.

The trading price of the shares of our common stock is likely to be volatile, and purchasers of our common stock could incur substantial losses.

The trading price of our common stock following this offering may fluctuate substantially. Following the completion of this offering, the market price of our common stock may be higher or lower than the price you pay in the offering, depending on many factors, some of which are beyond our control and may not be related to our operating performance. These fluctuations could cause you to incur substantial losses, including all of your investment in our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- significant volatility in the market price and trading volume of companies in our industry;

- announcements of new solutions or technologies, commercial relationships, acquisitions, or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- changes in how customers perceive the benefits of our products and future offerings;
- the public's reaction to our press releases, other public announcements, and filings with the SEC;
- fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes or fluctuations in our results of operations or financial projections;
- changes in actual or future expectations of investors or securities analysts;
- litigation involving us, our industry, or both;
- governmental or regulatory actions or audits;
- regulatory developments applicable to our business, including those related to privacy in the United States or globally;
- general economic conditions and trends;
- major catastrophic events in our domestic and foreign markets; and
- departures of key employees.

Risks Related to our Relationship with Fortress Biotech, Inc.

Fortress controls a voting majority of our common stock, which could be detrimental to our other shareholders.

Pursuant to the terms of the Class A Common Stock held by Fortress, Fortress will be entitled to cast, for each share of Class A Common Stock held by Fortress, the number of votes that is equal to 1.1 times a fraction, the numerator of which is the number of shares of our outstanding common stock and the denominator of which is the number of shares of outstanding Class A Common Stock (the "Class A Common Stock Ratio"). Thus, Fortress will at all times have voting control of Journey. Further, for a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock, the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of Journey. This concentration of voting power may delay, prevent or deter a change in control of us even when such a change may be in the best interests of all stockholders, could deprive our stockholders of an opportunity to receive a premium for their shares of common stock as part of a sale of Journey or our assets, and might affect the prevailing market price of our common stock.

We are a "controlled company" within the meaning of NASDAQ listing standards and, as a result, qualify for exemptions from certain corporate governance requirements. Although we do not presently intend to take advantage of these exemptions, we may do so in the future.

Upon completion of this offering we will be a "controlled company" within the meaning of NASDAQ listing standards. Under these rules, a company of which more than 50% of the voting power is held by an individual, a group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements of NASDAQ, including (i) the requirement that a majority of the Board of Directors consist of independent directors, (ii) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities and (iii) the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities. Although we do not presently intend to take advantage of these exemptions, we may do so in the future. Accordingly, our stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of NASDAQ. Investors may find our common stock less attractive as a result of our reliance on these

exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

If the proposed shared services agreement with Fortress is terminated, we may incur significant costs and risks.

In connection with the closing of this offering, we intend to enter into a shared services agreement with Fortress for them to continue to provide consulting services and the use of their personnel. If we separate from Fortress and the shared services agreement is terminated, we may incur significant costs, which might exceed our estimates. Additionally, we may incur some negative effects from a termination of shared services with Fortress, as we will likely have substantially fewer resources than Fortress.

The termination of the shared services agreement with Fortress may be costly and time-consuming to the Company and may pose challenges, such as effecting the termination while carrying on operations and difficulty in retaining key officers and personnel, as well as difficulty separating corporate infrastructure, including insurance, accounting, legal, finance, tax, and human resources, each of which could have an adverse effect on our business, financial condition and results of operations.

We may have received better terms from unaffiliated third parties than the terms we receive in our arrangements with Fortress.

We have arrangements with Fortress in connection with management and administration services for the Company. While we believe the terms of these arrangements are reasonable, they might not reflect terms that would have resulted from arm's-length negotiations between unaffiliated third parties. The terms of the arrangement relate to, among other things, systems, insurance, accounting, legal, finance, tax and human resources. We might have received better terms from third parties because, among other things, third parties might have competed with each other to win our business.

The ownership by our executive officers and some of our directors of shares of equity securities of Fortress and/or rights to acquire equity securities of Fortress might create, or appear to create, conflicts of interest.

Because of their current or former positions with Fortress, some of our executive officers and directors own shares of Fortress common stock and/or options to purchase shares of Fortress common stock. Their individual holdings of common stock and/or options to purchase common stock of Fortress may be significant compared to their total assets. Ownership by our directors and officers, after our separation, of common stock and/or options to purchase common stock of Fortress might appear to create conflicts of interest when these directors and officers are faced with decisions that could have different implications for Fortress than for us.

Fortress' current or future financial obligations and arrangements, or an event of default thereon, may change the ownership dynamic of us by Fortress.

Any default or breach by Fortress under any current or future credit agreement or arrangements may have an adverse effect on our business. Fortress has pledged as collateral to certain of its creditors equity in the Company. If Fortress were to default on its obligations to any such creditor, that creditor, whose interests may not align with those of our other stakeholders, could acquire a controlling interest in the Company. In addition, Fortress' current credit agreement with Oaktree Capital (the "Oaktree Credit Agreement") contains certain affirmative and negative covenants and events of default that apply in different instances to Fortress itself, its private subsidiaries, its public subsidiaries, or combinations of the foregoing. Although we are not a party to the Oaktree Credit Agreement, because Fortress controls our stockholder vote, Fortress may not permit us to effect certain actions which we feel would be in the Company's best interests, but which Fortress cannot allow so as to remain in compliance with the Oaktree Credit Agreement.

General Risks

Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our business, operating results and financial condition.

We have experienced significant growth in a short period of time. To manage our growth effectively, we must continually evaluate and evolve our organization. We must also manage our employees, operations,

finances and capital investments efficiently. Our efficiency, productivity and the quality of our products may be adversely impacted if we do not train our new personnel, particularly our sales and support personnel, quickly and effectively, or if we fail to appropriately coordinate across our organization. Additionally, our rapid growth may place a strain on our resources, infrastructure and ability to maintain the quality of our products. You should not consider our revenue growth and levels of profitability in recent periods as indicative of future performance. In future periods, our revenue or profitability could decline or grow more slowly than we expect. Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our operating results and financial condition.

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

The trading market for our common stock will partially depend on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts. If one or more of the analysts who cover us should downgrade our shares or change their opinion of our business prospects, our share price would likely decline. If one or more of these analysts ceases coverage of our company or fails to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Our reported financial results may be adversely affected by changes in accounting principles generally accepted in the United States. If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations could be adversely affected.

U.S. generally accepted accounting principles ("GAAP"), are subject to interpretation by the Financial Accounting Standards Board ("FASB"), the SEC and various bodies formed to promulgate and interpret appropriate accounting principles. A change in these principles or interpretations could have a significant effect on our reported results of operations and could affect the reporting of transactions already completed before the announcement of a change.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and accompanying notes appearing elsewhere in this prospectus. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as discussed in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations — Critical Accounting Policies and Estimates*." The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. Significant estimates, judgments, and assumptions used in our financial statements include, but are not limited to, those related to revenue recognition, accounts receivable and related reserves, useful lives and realizability of long-lived assets, research and development costs, assumptions used in the valuation of warrants, accounting for stock-based compensation, and valuation allowances against deferred tax assets. These estimates are periodically reviewed for any changes in circumstances, facts, and experience. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in the market price of our common stock.

Global and national financial events may have an impact on our business and financial condition in ways that we currently cannot predict.

A credit crisis, turmoil in the global or U.S. financial system, recession or similar possible events in the future could negatively impact us. A financial crisis or recession may limit our ability to raise capital through credit and equity markets. The prices for the products and services that we intend to provide may be affected by a number of factors, and it is unknown how these factors may be impacted by a global or national financial event.

If our estimates or judgments relating to our critical accounting policies are erroneous or based on assumptions that change or prove to be incorrect, our operating results could fall below the expectations of securities analysts and investors, resulting in a decline in our stock price.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and

accompanying notes. We base our estimates on our best judgment, historical experience, information derived from third parties and on various other assumptions that we believe to be reasonable under the circumstances, as discussed in the section titled "*Management's Discussion and Analysis of Financial Condition and Results of Operations*," the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenue and expenses that are not readily apparent from other sources. Our operating results may be adversely affected if our judgments prove to be wrong, assumptions change or actual circumstances differ from those in our assumptions, which could cause our operating results to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue recognition, stock-based compensation and income taxes.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of shares of our common stock in this offering will be approximately $ million, based upon the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares is exercised in full, we estimate that the net proceeds to be received by us will be approximately $ million, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds that we receive from this offering by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Similarly, an increase (decrease) of 1.0 million in the number of shares offered by us would increase (decrease) the net proceeds that we receive from this offering by approximately $ million, assuming that the assumed initial public offering price remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We do not expect that a change in the initial price to the public or the number of shares by these amounts would have a material effect on the uses of the proceeds from this offering, although it may accelerate the time at which we will need to seek additional capital.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our common stock and enable access to the public equity markets for us and our stockholders. We intend to use the net proceeds from this offering for general corporate purposes, including working capital, research and development, payments for research and development — licenses acquired, sales and marketing activities, general administrative matters, operating expenses and capital expenditures. We may also use a portion of the net proceeds from this offering to acquire or invest in businesses, products, services or technologies. However, we currently have no agreements or commitments for any material acquisitions or investments at this time. We cannot specify with certainty the particular uses for the net proceeds from this offering. We will have broad discretion over how to use the net proceeds from this offering, and our investors will be relying on the judgment of our management regarding the application of the net proceeds from this offering. Pending these uses, we intend to invest the net proceeds in short-term, investment-grade interest-bearing securities, such as money market accounts, certificates of deposit, commercial paper and guaranteed obligations of the U.S. government. The principal purposes of this offering are to create a public market for our common stock, obtain additional capital, facilitate future access to public equity markets, increase awareness of the Company in the market, facilitate the use of our common stock as a means of attracting and retaining key employees and provide liquidity to our current stockholders.

Predicting the costs necessary to develop product candidates can be difficult, and we will need substantial additional capital to complete our clinical development of any of our product candidates. The amounts and timing of our actual expenditures may vary significantly depending on numerous factors, including the progress and costs of our development activities, the status of and results from clinical trials, as well as the status and results from our current and any future collaborations with third parties for our product candidates, and any unforeseen cash needs. Pending the use of the proceeds from this offering as described above, we intend to invest the net proceeds from the offering that are not used as described above in investment-grade, interest-bearing instruments such as money market accounts, certificates of deposit, commercial paper and guaranteed obligations of the U.S. government.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our common stock, and we do not currently intend to pay any cash dividends on our common stock in the foreseeable future. We currently intend to retain all available funds and any future earnings for use in the operation and expansion of our business. Any future determination related to our dividend policy will be made at the discretion of our board of directors, and will depend upon, among other factors, our financial condition, results of operations, capital requirements, general business conditions, contractual restrictions, and other factors that our board of directors considers relevant.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be immediately diluted to the extent of the difference between the initial public offering price per share of our common stock and the as adjusted net tangible book value per share of our common stock after this offering.

As of June 30, 2021, our historical net tangible book value (deficit) was $ million, or $ per share of our common stock, based on 9,161,333 shares of common stock and Class A Common Stock outstanding. Our historical net tangible book value (deficit) per share represents the amount of our total tangible assets less total liabilities and Class A Preferred Stock, which is not included in our stockholders deficit, divided by the total number of shares of common stock and Class A Common Stock outstanding at June 30, 2021.

Net tangible book value dilution per share to new investors represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the as adjusted net tangible book value per share of common stock immediately after closing of this offering. After giving further effect to the sale of shares of our common stock that we are offering at the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and to the conversion of our Class A Preferred Stock, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of June 30, 2021 would have been $ million, or approximately $ per share. This amount represents an immediate increase in net tangible book value of $ per share to our existing stockholders and an immediate dilution in net tangible book value of approximately $ per share to new investors participating in this offering.

Dilution per share to new investors is determined by subtracting as adjusted net tangible book value per share after this offering from the assumed initial public offering price per share paid by new investors. The following table illustrates this dilution:

Assumed initial public offering price per share	$
Historical net tangible book value (deficit) per share at June 30, 2021	$
Increase in net tangible book value per share attributable to investors participating in this offering	
As adjusted net tangible book value per share after this offering	
Dilution per share to new investors participating in this offering	$

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the as adjusted net tangible book value per share after this offering by approximately $, and dilution in net tangible book value per share to new investors by approximately $, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase of one million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase our as adjusted net tangible book value per share after this offering by approximately $ and decrease the dilution to investors participating in this offering by approximately $ per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us. Similarly, a decrease of one million shares in the number of shares offered by us, as set forth on the cover page of this prospectus, would decrease the as adjusted net tangible book value per share after this offering by approximately $ and increase the dilution to investors participating in this offering by approximately $ per share, assuming the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and the estimated offering expenses payable by us.

If the underwriters exercise their option to purchase up to additional shares of our common stock in full in this offering, the as adjusted net tangible book value after the offering would be $ per

share, the increase in as adjusted net tangible book value per share to existing stockholders would be $ per share and the dilution per share to new investors would be $ per share, in each case assuming an initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus.

To the extent that outstanding options with an exercise price per share that is less than the as adjusted net tangible book value per share are exercised, new investors will experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the issuance of these securities could result in further dilution to our stockholders.

The following table summarizes, on an as adjusted basis as of June 30, 2021, the number of shares of common stock purchased or to be purchased from us, the total consideration paid or to be paid to us in cash and the average price per share paid by existing stockholders for shares issued prior to this offering and the price to be paid by new investors in this offering. The calculation below is based on the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. As the table below shows, investors participating in this offering will pay an average price per share substantially higher than our existing stockholders paid.

	Shares Purchased		Total Consideration		Weighted-Average Price
	Number	Percent	Amount	Percent	Per Share
Existing stockholders		%	$	%	$
Investors participating in this offering					$
Total		100.0%	$	100.0%	

Each $1.00 increase in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase total consideration paid by new investors, total consideration paid by all stockholders and the average price per share paid by all stockholders by $ million, $ million and $, respectively, while each $1.00 decrease in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would decrease total consideration paid by new investors, total consideration paid by all stockholders and the average price per share paid by all stockholders by $ million, $ million and $, respectively, and assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Similarly, a one million share increase (decrease) in the number of shares offered by us, as set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by investors participating in this offering, total consideration paid by all stockholders and the average price per share paid by all stockholders by approximately $ million, $ million and $, respectively, assuming the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The foregoing tables and calculations exclude:

- Options to purchase 2,114,333 shares of our common stock at a weighted average share price of $.79 per share.
- 720,524 shares of common stock upon the vesting of restricted stock units.
- 1,146,667 shares of common stock reserved for future issuance under our 2015 Stock Plan at June 30, 2021.

Our Class A Preferred Stock will only convert into common stock if the gross proceeds of the offering are $25 million or more. If the Class A Preferred Stock does not convert, after giving effect to the sale

of shares of our common stock that we are offering at the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, our as adjusted net tangible book value as of June 30, 2021 would have been $ million, or approximately $ per share. This amount represents an immediate increase in net tangible book value of $ per share to our existing stockholders and an immediate dilution in net tangible book value of approximately $ per share to new investors participating in this offering.

CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2021:

- on an actual basis;
- on an as adjusted basis to reflect our sale of shares of common stock in this offering at an assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The as adjusted information below is illustrative only, and our capitalization following the closing of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this information in conjunction with our financial statements and the related notes included elsewhere in this prospectus, the sections titled "Selected Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and other financial information contained in this prospectus.

	As of June 30, 2021		
	Actual	Proforma	Proforma As Adjusted[1]
Cash	**$12,176**	**$**	**$**
Accrued expenses, related party	237		
Contingently issuable shares, related party	263		
Installment payments – licenses, short-term (net of debt discount of $639)	3,861		
Note payable, related party[2]	5,245		
Installment payments – licenses, long-term (net of debt discount of $565)	6,435		
Convertible preferred shares settled note[3] (net of debt discount of $1,824)	12,508		
Derivative warrant liability	4,287		
Stockholders' (deficit)/equity			
Common stock, $.0001 par value, 50,000,000 shares authorized, 3,161,333 shares issued and outstanding	—		
Common stock – Class A, $.0001 par value, 50,000,000 shares authorized, 6,000,000 shares issued and outstanding	1		
Additional paid-in capital	5,684		
Retained earnings (accumulated deficit)	(5,893)		
Total stockholders' (deficit) equity	(209)		
Total liabilities and stockholders' equity	**$32,627**	**$**	**$**

(1) The as adjusted information set forth above is illustrative only and will change based on the actual initial public offering price and other terms of this offering determined at pricing. Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. A one million share increase (decrease) in the number of shares offered by us at the assumed initial public offering price per share of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase

(decrease) the as adjusted amount of each of cash and cash equivalents, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(2) $5.2 million represents the Fortress Note.

(3) Our Class A Preferred Stock will only convert into common stock if the gross proceeds of the offering are $25 million or more. If the Class A Preferred Stock does not convert, the as adjusted stockholders equity would have been $.

(4) Includes our contingent payment warrant payable of $3.7 million which may convert into common stock or paid in cash upon an offering that results in a fully diluted market cap of $125 million or greater. Also includes placement agent warrants that convert upon an IPO.

The outstanding share information in the table above is based on 9,161,333 shares of our Class A common shares and our common stock outstanding as of June 30, 2021, and excludes:

- Options to purchase 2,114,333 shares of our common stock at a weighted average share price of $.79 per share.
- 720,524 shares of common stock upon the vesting of restricted stock units.
- 1,146,667 shares of common stock reserved for future issuance under our 2015 Stock Plan at June 30, 2021.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

You should read the following discussion and analysis of financial condition and results of operations together with the section titled "Summary Consolidated Financial Data" and our consolidated financial statements and related notes included elsewhere in this prospectus. This discussion and other parts of this prospectus contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed in or implied by these forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in the section titled "Risk Factors." Please also see the section titled "Special note regarding forward-looking statements."

Overview

We are a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life and physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our exclusive field sales organization.

Since inception, our operations have been primarily financed through a working capital note from Fortress, referred to herein as the "Fortress Note", cash generated by operations and cash raised in our private offering of our 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Stock"). We expect our expenses will increase substantially for the foreseeable future as we pursue business development opportunities, commercialize and market new products and incur additional costs associated with operating as a public company. To date, our business has not been materially impacted by COVID-19, however depending on the extent of the ongoing pandemic, it is possible that our business, financial condition and results of operations could be materially and adversely affected by COVID-19 in the future.

As of June 30, 2021, we had a cash balance of $12.2 million and accounts receivable, net of reserves, of $26.2 million. For the six months ended June 30, 2021, we used cash for operations of $6.1 million. Without giving effect to the anticipated net proceeds of this offering, based on our current operating plan, we believe we have sufficient cash on hand along with receivables from our customers to support operations through at least the next twelve months. See "— Liquidity and Capital Resources."

Recent Events

- In June 2021, we entered into an agreement with Dr. Reddy's Laboratories, Ltd. ("DRL") for the development of DFD-29, a modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea. We and DRL intend to conduct two Phase 3 clinical trials to assess the efficacy, safety and tolerability of DFD-29 as a treatment for rosacea for regulatory approval.
- In May 2021, we acquired Qbrexza from Dermira, Inc., a wholly owned subsidiary of Eli Lilly and Company ("Dermira").
- In April 2021, we launched Accutane® (isotretinoin) for the treatment of recalcitrant nodular acne.
- As of July 18, 2021, we privately offered and issued 750,680 shares of our Class A Preferred Stock" at a price of $25.00 per share, for gross proceeds of $19.0 million (the "Class A Preferred Offering").
- On March 31, 2021, we entered into an agreement with East West Bank ("EWB") to provide us with a $7.5 million working capital line of credit.

Components of Results of Operations

Product Revenue, Net

Our revenues are generated from product sales of our branded and generic products. As is customary in the pharmaceutical industry, gross product sales are subject to a variety of deductions in arriving at net product sales. Provisions for these deductions are recognized concurrently with the recognition of gross product sales and these provisions include discounts, rebates, governmental rebate programs, price adjustments, returns, chargebacks, promotional programs and other sales allowances. As more fully discussed in Note 2, "Summary of Significant Accounting Policies" to our audited consolidated financial statements, we continually monitor the provisions for these deductions and evaluate the estimates used as additional information becomes available.

Cost of Goods Sold — Product Revenue

Our cost of product revenue includes our third-party manufacturing costs for the products sold, shipping costs, drug user fees and royalty payments made to third parties.

Research and Development Expenses

Research and development costs primarily consist of personnel related expenses, and other related expenses, the up-front made to DRL for the DFD-29 license and milestone costs related to the DFD-29 license. In the future, as our development program commences, we may include in research and development costs payments made to third party contract research organizations for clinical studies, investigative sites for our clinical trials, consultants, the cost of acquiring and manufacturing clinical trial materials, costs associated with regulatory filings and patents, laboratory costs and other supplies.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist principally of sales and marketing costs, personnel related costs for management and business consultants and other related costs, including stock-based compensation. Selling, general and administrative expenses also include professional fees for legal, consulting, outside services, and other general operating expenses. We expect our selling, general and administrative expenses to increase over the next several years to support the commercialization and marketing of our expanding product portfolio. These increases will likely include increased costs related to the hiring of additional personnel and fees to outside consultants, attorneys and accountants, among other expenses.

Additionally, we expect to incur increased expenses associated with being a public company, including costs of additional personnel, accounting, audit, legal, regulatory, and tax-related services associated with maintaining compliance with exchange listing and Securities and Exchange Commission ("SEC") requirements, director and officer insurance costs, and investor and public relations costs.

Other Expense

Other expense consists of interest expense associated with notes payable we issued in connection with various acquisitions. None of the interest expense recorded is associated with the Fortress Note as it is non- interest bearing. Additionally, all of the interest expense recorded is non-cash as it represents imputed interest expense derived from the accretion of discount associated with the notes payable.

Comparison of the Years Ended December 31, 2020 and 2019

The following table summarizes our results of operations for the years ended December 31, 2020 and 2019:

	Year Ended December 31,		Change	
($ in thousands)	**2020**	**2019**	**$**	**%**
Product revenue, net	$ 44,531	$ 34,921	$9,610	28%
Operating expenses				
Cost of goods sold – product revenue	14,594	10,532	4,062	39%
Selling, general and administrative	22,086	19,130	2,956	15%
Total operating expenses	36,680	29,662	7,018	24%
Income from operations	7,851	5,259	2,592	49%
Other expense				
Interest expense	698	255	443	174%
Total other expense	698	255	443	174%
Income before income taxes	7,153	5,004	2,149	43%
Income tax expense	1,870	1,379	491	36%
Net income	$ 5,283	$ 3,625	$1,659	46%
Net income per common share – basic	$ 0.58	$ 0.40	$ 0.18	46%
Net income per common share – diluted	$ 0.49	$ 0.36	$ 0.13	36%

Product revenue, net

For the years ended December 31, 2020 and December 31, 2019, we generated $44.5 million and $34.9 million, respectively, from the sale of our branded and generic products, net of discounts, coupons, managed care contract expenses and estimated returns.

Net revenues associated with our marketed dermatological products increased by $9.6 million, or 28%, as depicted in the table below:

	Year Ended December 31		Change	
($ in thousands)	**2020**	**2019**	**$**	**%**
Targadox®	$ 30,708	$ 28,068	$2,640	9%
Ximino®	9,518	3,642	5,876	161%
Exelderm®	4,453	2,867	1,586	55%
Other product revenue	(148)	344	(492)	NM
Total product revenue, net	$ 44,531	$ 34,921	$9,610	28%

The following table presents information about revenue deductions:

	Returns	Coupons and rebates	Total
Balance at December 31, 2018	$ 3,065	$ 1,599	$ 4,664
Current Provision Related to Sales Made in the Current Period	2,925	44,359	47,284
Checks/Credits Issued to Third Parties	(574)	(37,567)	(38,141)
Reclassed Between Liability Accounts	(900)	900	—
Balance at December 31, 2019	$ 4,516	$ 9,291	$ 13,807
Current Provision Related to Sales Made in the Current Period	$ 1,294	99,631	$100,924
Checks/Credits Issued to Third Parties	(2,130)	(97,153)	(99,283)
Reclassed Between Liability Accounts	(1,100)	1,100	—
Balance at December 31, 2020	**$ 2,580**	**$ 12,869**	**$ 15,448**

We may in the future generate revenue from a variety of additional sources, including license fees and royalties, milestone payments, research and development payments in connection with strategic partnerships and/or product sales. Although we are currently generating positive revenues, we may, in the future, incur substantial losses from operations related to potential development stage products.

Cost of goods sold — product revenue

Cost of goods sold as a percentage of net product revenue increased by 2.6% from 30.2% to 32.8% for the year ended December 31, 2019 as compared to the year ended December 31, 2020. The increase is primarily due to regulatory fees associated related to Ximino, as well as an increase in product manufacturing costs. Amortization expense accounted for $1.4 million and $1.2 million of costs of goods sold — product revenue for the years ended December 2020 and 2019, respectively.

Selling, general and administrative expenses

For the years ended December 31, 2020 and December 31, 2019, selling, general and administrative expenses were $22.1 million and $19.1 million, respectively. The increase of $3.0 million, or 15%, included a $1.0 million increase in costs, mainly due to credit card processing fees, along with a $1.8 million increase in office and personnel expense, a $0.6 million increase in consulting expense, partially offset by a $0.3 million reduction in sales force related expenses due to a slowdown in 2020 associated with COVID-19. Noncash stock-based compensation expense included in selling, general and administrative expenses was $0.2 million for both years ending December 31, 2020 and 2019.

Income tax expense

Our effective tax rate for 2020 and 2019 was 26% and 28%, respectively. Our tax rate is affected by recurring items, such as the U.S. federal and state statutory tax rates and the relative amounts of income we earn in those jurisdictions. It is also affected by discrete items that may occur in any given year but are not consistent from year to year. In 2020, the decrease in the effective tax rate of 2% was primarily attributable to decreases in return to provision adjustments offset by an increase in state taxes, due to our presence in additional higher tax rate jurisdictions.

Comparison of the Six Months Ended June 30, 2021 and 2020

The following table summarizes our results of operations for the six months ended June 30, 2021 and 2020:

	(Unaudited) Six Months Ended June 30,		Change	
($ in thousands, except per share data)	**2021**	**2020**	**$**	**%**
Product revenue, net	$ 26,007	$21,361	$ 4,646	22%
Operating expenses				
Cost of goods sold – product revenue	11,392	6,934	4,458	64%
Research and development	29	—	29	100%
Research and development – licenses acquired	13,743	—	13,743	100%
Selling, general and administrative	14,021	10,441	3,580	34%
Total operating expenses	39,185	17,375	21,810	126%
Income (loss) from operations	(13,178)	3,986	(17,164)	-431%
Other expense				
Interest expense	1,563	305	1,258	412%
Change in fair value of derivative liability	182	—	182	100%
Total other expense	1,745	305	1,440	472%
Income (loss) before income taxes	(14,923)	3,681	(18,604)	-505%
Income tax (benefit) expense	(3,326)	929	(4,255)	-458%
Net (loss) income	$(11,597)	$ 2,752	$(14,349)	-521%
Net (loss) income per common share – basic	$ (1.27)	$ 0.30	$ (1.57)	-520%
Net (loss) income per common share – diluted	$ (1.27)	$ 0.25	$ (1.52)	-598%

Product revenue, net

For the six months ended June 30, 2021 and 2020, we generated $26.0 million and $21.4 million, respectively, from the sale of our branded and generic products, net of discounts, coupons, managed care contract expenses and estimated returns.

Net revenues associated with our marketed dermatological products increased by $4.6 million, or 22%, as depicted in the table below:

	(Unaudited) Six Months Ended June 30,		Change	
($ in thousands)	**2021**	**2020**	**$**	**%**
Targadox®	$ 12,926	$ 14,981	$(2,055)	-14%
Ximino®	3,413	4,823	(1,410)	-29%
Exelderm®	2,953	1,687	1,266	75%
Accutane®	2,141	—	2,141	100%
Qbrexa®	4,568	—	4,568	100%
Other branded revenue	6	(130)	136	-105%
Total product revenues	$ 26,007	$ 21,361	$ 4,646	22%

The following table presents information about revenue deductions:

	Returns	Coupons and rebates	Total
Balance at December 31, 2020	$ 2,580	$ 12,869	$ 15,448
Current Provision Related to Sales Made in the Current Period	1,428	70,866	72,294
Checks/Credits Issued to Third Parties	(1,594)	(65,441)	(66,721)
Reclassed Between Liability Accounts	(315)	315	—
Balance at June 30, 2021	**$ 2,099**	**$ 18,609**	**$ 20,706**

We may in the future generate revenue from a variety of additional sources, including license fees and royalties, milestone payments, research and development payments in connection with strategic partnerships and/or product sales. Although we are currently generating positive revenues, we may, in the future, incur substantial losses from operations related to potential development stage products.

Cost of goods sold — product revenue

Cost of goods sold as a percentage of net product revenue increased by 11.3% from 32.5% to 43.8% for the six months ended June 30, 2021, as compared to the six months ended June 30, 2020. The increase is primarily due to the Qbrexza inventory step up of $1.2 million for inventory units sold, as well as the increase in royalty expense related to Qbrexza and Accutane of $1.8 million. We expect the total step-up in inventory value related to Qbrexza units sold to approximate $5.7 million and to be incurred in 2021. However, this amount is based upon our current forecast and may be lower depending on actual units sold.

Research and development expenses and research and development — licenses acquired expenses

Research and development expenses and research and development — licenses acquired increased $13.7 million or 100% from the six months ended June 30, 2021 to the six months ended June 30, 2020. The increase is attributed to the acquisition of our development stage asset from DRL for $10.0 million and the fair value of the contingent payment due DRL of $3.7 million. We had no development stage assets in 2020.

Selling, general and administrative expenses

For the six months ended June 30, 2021 and 2020, selling, general and administrative expenses were $14.0 million and $10.4 million, respectively. The increase of $3.6 million, or 34%, included a $1.6 million increase in salary costs for our outsourced field sales force resulting from a one time savings in costs due to the impact of COVID-19 during the six months ended June 30, 2020, $1.4 million increase in marketing expenses attributable to the launches of Accutane and Qbrexza as well as $0.6 million increase in personnel expense which includes $0.3 million of severance costs and $0.2 million of allocated expenses from Fortress related to finance and accounting services provided directly to us. No expenses were allocated from Fortress during 2020.

Noncash stock-based compensation expense included in selling, general and administrative expenses was approximately $33,000 and $99,000 for the six months ended June 30, 2021 and 2020, respectively.

Other Expense

For the six months ended June 30, 2021, other expense increased by $1.4 million or 883% from the six months ended June 30, 2020. The increase is due to an increase in imputed interest on our installment payments for licenses of $0.1 million, accretion of $0.6 million related to conversion of our convertible preferred notes and $0.6 million interest expense and the amortization of debt discount related to our convertible preferred notes. In addition, we recorded a $0.2 million fair value increase in connection with placement agent warrants related to our convertible preferred notes

Income tax expense

For the six months ended June 30, 2021 and 2020, income tax expense or (benefit) was ($3.3 million) and $0.9 million, respectively, resulting in an effective income tax rate of 23.61% and 25.33%, respectively. The change in effective tax rate is due to changes in unfavorable permanent book tax differences.

Liquidity and Capital Resources

Since inception, our operations have been financed primarily through our Fortress Note and cash received from operations and our Class A Preferred Stock offering. We also have access to a working capital line of credit as discussed below. We may require additional financing to pursue both development stage and commercial opportunities. In addition, we anticipate increased commercialization expenses related to the launch of new products, as well as increased costs related to development and regulatory approval of potential development stage product acquisitions, including DFD-29. As we continue to expand our product portfolio, we may need to fund possible future operating losses, and, if deemed appropriate, establish or secure through additional third-party manufacturing for our products, and expanded sales and marketing capabilities related to recent product acquisitions. We believe that our current cash and cash equivalents is sufficient to fund operations for at least the next twelve months. Our failure to raise capital as and when needed would have a material adverse impact on our financial condition and our ability to pursue our business strategies

Line of Credit

On March 31, 2021, we entered into a Loan and Security Agreement with East West Bank ("EWB Loan") under which we may request advances in aggregate not exceeding the lesser of: (i) a revolving line of credit $7.5 million and (ii) a borrowing base representing approximately 85% of our eligible accounts receivable. Advances bear interest on the outstanding daily balance, at a floating rate of 1.0% above the Prime Rate set by EWB. Interest is due and payable on the last day of the month. The EWB Loan matures on March 31, 2024.

Class A Preferred Stock Offering

In March 2021, we commenced an offering of 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Offering") in an aggregate minimum amount of $12.5 million and an aggregate maximum amount of $30.0 million. The Class A Preferred Offering terminated on July 18, 2021. Pursuant to the terms of the agreement, the Class A Preferred Stock automatically converts into our common stock upon a sale of or a financing in an amount of at least $25.0 million within a year of the closing date of the Class A Preferred Offering (extendable by another six months at our option) at a discount of 15% to the per share qualified stock price. In the event that neither a sale nor a $25.0 million financing is completed, the Class A Preferred Stock will be exchanged for shares of Fortress common stock, at a 7.5% discount to the average Fortress common stock trading price over the 10-day period preceding such exchange.

Although our Class A Preferred Stock is in the form of preferred stock, in substance this instrument is accounted for as a liability on our consolidated balance sheet as it converts into a variable number of shares at settlement related to the original amount invested and as such it does not contain a true conversion feature.

Dividends on the Class A Preferred Stock of 8% annually are paid on a quarterly basis by Fortress in the form of shares of Fortress' common stock based upon a 7.5% discount to the average trading price over the 10-day period preceding the dividend payment date. Furthermore, Fortress is obligated to file one or more registration statements covering the issuance of shares that result from such dividends/exchange. As consideration for the foregoing issuances by Fortress of its securities, we will issue to Fortress additional shares of our common stock, debt securities, or a combination of the foregoing.

As of July 18, 2021, we completed five closings in connection with the Class A Preferred Offering ("Closings"). In connection with the Closings, we issued an aggregate of 758,680 Class A Preferred shares at a price of $25.00 per share, for gross proceeds of $19.0 million. Following the payment of placement agent fees of $1.9 million, and other expenses of $0.1 million, we received $17.0 million of net proceeds.

Cash Flows for the Years Ended December 31, 2020 and 2019

($ in thousands)	Year Ended December 31, 2020	2019
Total cash (used in)/provided by:		
Operating activities	$ 5,132	$ 9,018
Investing activities	(1,200)	(2,400)
Financing activities	(487)	(3,551)
Net increase in cash	$ 3,445	$ 3,067

Operating Activities

Net cash provided by operating activities decreased to $5.1 million for the year ended December 31, 2020 from $9.0 million for the year ended December 31, 2019. The decrease was primarily due to an increase in working capital of $3.2 million.

Investing Activities

Net cash used in investing activities was $1.2 million and $2.4 million for the years ended December 31, 2020 and 2019, respectively, and the investments in both periods related to the expansion of our product portfolio.

Financing Activities

Net cash used in financing activities was $0.5 million and $3.6 million for the years ended December 31, 2020 and 2019, respectively. Activity in 2019 related primarily to payments made on the Fortress Note, while 2020 payments related to installment payments due related to product acquisitions.

Cash Flows for the Six Months Ended June 30, 2021 and 2020

($ in thousands)	(Unaudited) Six Months Ended June 30, 2021	2020	Change
Net cash (used in) provided by operating activities	$ (6,077)	$ 1,149	$ (7,226)
Net cash provided by financing activities	10,007	—	10,007
Net increase in cash	$ 3,930	$ 1,149	$ 2,781

Operating Activities

Net cash used in operating activities was $6.1 million for the six months ended June 30, 2021, compared with net cash provided by operating activities $1.1 million for the six months ended June 30, 2020. The decrease was primarily due to an increase of net loss of $14.3 million, increase in the deferred tax benefit of $3.5 million, the increase in inventory purchased in connection with the Qbrexza purchase of $12.6 million offset by a decrease in working capital of $18.6 million and a $3.7 million decrease related to the contingent payment obligation in connection with the DFD-29 license agreement.

Financing Activities

Net cash provided by financing activities was $10.0 million and nil for the six months ended June 30, 2021, and 2020, respectively. During the six months ended June 30, 2021, net proceeds from convertible preferred shares increased $12.8 million, offset by the repayment of installment payments — licenses of $2.8 million.

Off-Balance Sheet Arrangements

During the periods presented we did not have, nor do we currently have, any off-balance sheet arrangements as defined under SEC rules.

Contractual Obligations

We have undertaken obligations to make contingent milestone payments to the licensors of our portfolio of drug candidates. In addition, we pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. Our future contractual obligations, as of June 30, 2021, excluding royalties we pay on net sales, are comprised of the following ($ in thousands):

Net sales milestones for product acquisition	$303,000
Development milestones	38,500
Contingent payments	5,000
Accrued research and development license acquired	8,000

We lease office space in Scottsdale, Arizona under a lease that was most recently amended in August 2020 to extend the lease term until December 31, 2022, with annual rent of approximately $96,000. As of June 30, 2021, future lease liability was as follows ($ in thousands):

	Future Lease Liability
Six Months Ended December 31, 2021	$ 48
Year Ended December 31, 2022	100
Total	148
Less: present value discount	(5)
Operating lease liabilities	$ 143

We enter contracts in the normal course of business for manufacturing and other services and products for operating purposes. These contracts are generally cancelable by us upon 90 to 120 days' prior written notice. Payments due upon cancelation consist only of payments for services provided and expenses incurred up to the date of cancelation.

Agreement with Dr. Reddy's Laboratories, Ltd

On June 29, 2021, we issued a press release announcing that we had entered a license, collaboration, and assignment agreement (the "DFD-29 Agreement") with Dr. Reddy's Laboratories Ltd. ("Dr. Reddy's") for the collaborative development and commercialization of the DFD-29 program (minocycline HCl 40 mg capsules) for the treatment of rosacea. We acquired global commercialization rights to DFD-29, including in the U.S. and Europe, except that Dr. Reddy's has retained certain rights to the program in select markets including Brazil, Russia, India, and China. Through this collaboration, we will work together with Dr. Reddy's to complete the development of DFD-29, which includes conducting two Phase III studies to assess the efficacy, safety and tolerability of oral DFD-29 for the treatment of rosacea and the regulatory submission of a new drug application under Section 505(b)(2) of the Federal Food, Drug and Cosmetic Act. Dr. Reddy's will provide development support including the monitoring of two Phase III clinical trials. The Phase III clinical trials have not yet begun.

Pursuant to the terms and conditions of the DFD-29 Agreement, we agreed to make an upfront $10.0 million payment to Dr. Reddy's, of which $2.0 million paid on June 29, 2021 (the "Effective Date") and $8.0 million is payable 90 days following the Effective Date. Dr. Reddy's will be eligible to receive payments of up to $163.0 million in the aggregate upon the achievement of certain regulatory and commercial milestones. Royalties ranging from ten percent to twenty percent are payable on net sales of the product. Additionally, we agreed to fund and oversee the Phase III clinical trials approximating $24.0 million, based upon the most recent development plan and budget, which may be subject to change.

The Phase II study, conducted in Germany, was a multi-center, randomized, double-blinded, parallel- group, controlled study that assessed the efficacy, safety and tolerability of oral DFD-29 (20 and 40 mg) extended release minocycline HCl capsules for the treatment of inflammatory lesions of rosacea over 16 weeks. Initial patient enrollment in the Phase II study included 205 male and female subjects with papulopustular rosacea. 160 subjects completed the study. Each subject was allocated to one of the following treatment groups, and received one capsule once daily, in the morning, for 16 weeks: (i) DFD-29 40 mg

extended release capsules (with 47 subjects at completion); (ii) DFD-29 20 mg extended release capsules (with 38 subjects at completion); (iii) Oraycea® (doxycycline) capsules (with 40 subjects at completion); or (iv) placebo capsules (with 35 subjects at completion). The study showed that DFD-29 40 mg had statistical significance to both placebo and the active control, Oraycea® (German equivalent of U.S. marketed Oracea®), on both co-primary endpoints — proportion of subjects with Investigator's Global Assessment treatment success (grade 0 or 1 with at least a two grade reduction from baseline at week 16) and total inflammatory lesion count reduction from baseline to week 16.DFD-29 40 mg had approximately double the efficacy when compared against Oraycea® for both co-primary endpoints. More information on the DFD-29 Phase II study can be found at clinicaltrials.gov. Oracea® and Oraycea® are registered trademarks of Galderma Holdings, S.A.

Critical Accounting Estimates and Policies

This management's discussion and analysis of our financial condition and results of operations is based on our consolidated financial statements, which have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP"). The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, and expenses and the disclosure of contingent assets and liabilities in our consolidated financial statements. In accordance with GAAP, we evaluate our estimates and judgments on an ongoing basis, including those related to accrued expenses, estimated useful lives for intangible assets, and stock-based compensation. We base our estimates on historical experience, known trends and events, and various other factors that are believed to be reasonable under the circumstances, the results of which form the 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 these estimates under different assumptions or conditions.

We define our critical accounting policies as those accounting principles that require us to make subjective estimates and judgments about matters that are uncertain and are likely to have a material impact on our financial condition and results of operations, as well as the specific manner in which we apply those principles. While our significant accounting policies are more fully described in Note 2 to our audited consolidated financial statements appearing elsewhere in this prospectus, we believe the following are the critical accounting policies used in the preparation of our consolidated financial statements that require significant estimates and judgments.

There have been no material changes in our significant accounting policies to those previously disclosed in the consolidated financial statements included elsewhere in this prospectus, other than the accounting for our share-settled notes and sequencing.

Class A Preferred Stock

Our Class A Preferred Stock includes settlement features that result in liability classification. The initial carrying value of our Class A Preferred Stock is accreted to the expected settlement value, a fixed monetary amount to be settled by issuing a variable number of our common shares or in certain circumstances issuance of Fortress common stock. The discount to the settlement value is accreted to interest expense using the effective interest method.

Sequencing

On March 31, 2021, we adopted a sequencing policy under accounting Standards Codification ("ASC") 815-40-35 Derivatives and Hedging ("ASC 815") whereby in the event that reclassification of contracts from equity to assets or liabilities is necessary pursuant to ASC 815 due to our inability to demonstrate it has sufficient authorized shares as a result of certain securities convertible or exchangeable for a potentially indeterminable number of shares, shares will be allocated on the basis of the earliest issuance date of potentially dilutive instruments, with the earliest grants receiving the first allocation of shares.

Pursuant to ASC 815, grants or issuances of securities or options to our non-employees, employees or directors are not subject to the sequencing policy.

Revenue Recognition

We record revenue in accordance with the provisions of ASC Topic 606, Revenue from Contracts with Customers ("ASC 606"). The core principle of this revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. Our revenues primarily result from contracts with customers, which are generally short-term and have a single performance obligation — the delivery of product. Our performance obligation to deliver products is satisfied at the point in time that the goods are received by the customer, which is when the customer obtains title to and has the risks and rewards of ownership of the products. The transaction price is the amount of consideration to which we expect to be entitled in exchange for transferring promised goods to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both.

Many of our products sold are subject to trade discounts, rebates, coupons and right of return. Revenues are recorded net of provisions for variable consideration, including discounts, rebates, governmental rebate programs, price adjustments, returns, chargebacks, promotional programs, and other sales allowances. Accruals for these provisions are presented in the consolidated financial statements as reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). Amounts recorded for revenue deductions can result from a complex series of judgements about future events and uncertainties and can rely heavily on estimates and assumptions. The following section briefly describes the nature of our provisions for variable consideration and how such provisions are estimated.

Trade Discounts and Other Sales Allowances — We provide trade discounts and allowances to our wholesale customers for sales order management, data, and distribution services. We also provide for prompt pay discounts if payment is received within the payment term days which generally range from 30 to 75 days. These discounts and allowances have been recorded as a reduction of revenue and a reduction to accounts receivables.

Product Returns — Consistent with industry practice, we offer customers a right to return any unused product and such right of return commences six months prior to product expiration date and ends one year after product expiration date. Products returned for expiration are reimbursed at current or contracted price less 5%. We estimate the amount of our product sales that may be returned by our customers and accrue this estimate as a reduction of revenue in the period the related product revenue is recognized. We currently estimate product return reserves using available industry data and our own sales information, including our visibility and estimates into the inventory remaining in the distribution channel.

Government Chargebacks — Chargebacks for fees and discounts to indirect qualified government healthcare providers represent the estimated obligations resulting from contractual commitments to sell products to qualified U.S. Department of Veterans Affairs hospitals and entities eligible to participate in the 340B drug pricing program at prices lower than the list prices charged to customers who directly purchase the product from us. Customers charge us for the difference between what they pay for the product and the statutory selling price to the qualified government entity. These allowances are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivables, net. The chargeback amounts from our direct customer are generally determined at the time of their resale to the qualified government healthcare provider by customers, and we generally issue credits for such amounts within a few weeks of our direct customer's notification to we of the resale. The allowance for chargebacks is based on expected sell through levels by our direct customers to indirect customers, as well as estimated wholesaler inventory levels.

Government Rebates — We are subject to discount obligations under state Medicaid programs and Medicare. These accruals are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue. For Medicare, we also estimate the number of patients in the prescription drug coverage gap for whom we will owe an additional liability under the Medicare Part D program. For Medicaid programs, we estimate the portion of sales attributed to Medicaid patients and record a liability for the rebates to be paid to the respective state Medicaid programs. Our liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet

been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Coupons — Another incentive includes coupons on certain products for qualified commercially-insured parties with prescription drug co-payments. The accrual for coupons is based on an estimate of redemptions and the cost per coupon claim that we expect to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue.

Rebates — We offer managed care rebates to certain providers. We calculate rebate payment amounts due under this program based on actual qualifying products and applies a contractual discount rate. The accrual is based on an estimate of claims that we expect to receive and inventory in the distribution channel. The accrual is recognized at the time of sale, resulting in a reduction of product revenue.

Intangible Assets

Intangible assets are reported at cost, less accumulated amortization and impairments. Intangible assets with finite lives are amortized over their estimated useful lives, which represents the estimated life of the product. Amortization is calculated primarily using the straight-line method.

During the ordinary course of business, we have entered into certain asset purchase agreements. Potential milestone payments such as sales targets or regulatory milestones are not probable and estimable and therefore, have not been recorded as liabilities. Upon a milestone payment being achieved, the milestone payment will be capitalized and amortized over the remaining useful life. Certain potential royalty payments other than those due for existing product sales, are not probable and estimable, and therefore have not been recorded as liabilities. When royalty payments become due, these costs are recorded as cost of goods sold as sales are recognized.

Stock-based Compensation

We expense stock-based compensation to employees and non-employees over the requisite service period based on the estimated grant-date fair value of the awards and actual forfeitures.

The fair value of our common stock underlying the stock options is also an input to the Black- Scholes option pricing model. We engaged an independent third-party valuation firm to provide an estimate of the fair value of our common stock for the year ended December 31, 2018, utilizing input from management. The fair value of our common stock was determined considering several objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of our common stock and the general and industry-specific economic outlook.

We estimate the fair value of stock option grants using the Black-Scholes option pricing model, which requires the use of a number of assumptions including the fair value of the common stock, expected volatility, risk-free interest rate, expected dividends and the expected term of the option. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. Forfeitures are recorded as they occur. All stock-based compensation costs are recorded in selling, general and administrative ("SG&A") expense in the consolidated statements of operations.

Income Taxes

As of June 30, 2021, we are included in the Fortress consolidated federal tax return and consolidated or combined state tax returns in multiple jurisdictions. Our consolidated financial statements recognize the current and deferred income tax consequences that result from our activities during the current and preceding periods pursuant to the provisions of ASC Topic 740, Income Taxes, as if we were a separate taxpayer rather than a member of the Fortress consolidated income tax return group. Fortress has agreed that we do not have to make payments to Fortress for our use of net operating losses ("NOLs") of Fortress (including

other Fortress group members). Since Fortress does not require us to pay in any form for the utilization of the consolidated group's NOLs, the tax benefit we realize has been recorded as a capital contribution.

We record income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. We establish a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered our history of cumulative tax and book income incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that we will realize the benefits of the net deferred tax assets as of June 30, 2021, December 31, 2020 and December 31, 2019.

For tax positions that are more likely than not of being sustained upon audit, we recognize the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, we do not recognize any portion of the benefit. As of June 30, 2021, we had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance. We would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded through June 30, 2021.

Recent Accounting Pronouncements

See Note 2 to our consolidated financial statements included elsewhere in this prospectus for information about recent accounting pronouncements, the timing of their adoption, if applicable, and our assessment, if any, of their potential impact on our financial condition and results of operations.

Quantitative and Qualitative Disclosures About Market Risk

This disclosure is not applicable, as we are a smaller reporting company.

BUSINESS

Overview of the Business, Relevant Disease States, Market, and Products

Journey Medical Corporation is a commercial-stage pharmaceutical company founded in October 2014 that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. Our current portfolio includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. We are managed by experienced life science executives with a track record of creating value for their stakeholders and bringing novel medicines to the market, enabling patients to experience increased quality of life, and enabling physicians and other licensed medical professionals to provide better care for their patients. We aim to acquire rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through our field sales organization. Since inception, we have made significant investments to build out our commercial product portfolios, which we believe, coupled with our experienced dermatology sales leadership team and our recently expanded field sales force, will position our business for growth.

As of June 30, 2021, our major marketed products, which have been approved by the U.S. Food and Drug Administration ("FDA") for sale in the United States, include:

- Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis), acquired and launched in May 2021;
- Accutane® (an oral isotretinoin drug for the treatment of severe recalcitrant nodular acne), licensed in July 2020 and launched in April 2021;
- Targadox® (an oral doxycycline drug for adjunctive therapy for severe acne), licensed in March 2015 and launched in October 2016;
- Ximino® (an oral minocycline drug for the treatment of moderate to severe acne), acquired and launched in August 2019; and
- Exelderm® Cream and Solution (a broad-spectrum antifungal intended for topical use), acquired and launched in September 2018.

Additionally, we sell three authorized generic products:

- doxycycline hyclate immediate release tablets, launched in May 2018;
- minocycline hydrocholoride extended release capsules, launched in April 2020; and
- sulconazole nitrate cream and solution, launched in January 2020.

For the 2020 fiscal year, we had revenue of $44.5 million for our products that were marketed as of the end of 2020. For the six months ended June 30, 2021, we had revenue of $26.0 million, compared to $21.4 million for the six months ended June 30, 2020. We expect to continue to market these prescription drugs in the U.S. through our field sales force.

An important part of our growth strategy is to identify new business development opportunities, including development stage and commercial drugs that we may acquire from other pharmaceutical companies. On June 29, 2021, we entered into an agreement with Dr. Reddy's Laboratories, Ltd. to license and acquire global ownership rights, title, and interest to DFD-29, a modified release minocycline late-stage development product that is being evaluated to treat inflammatory lesions of rosacea. Additionally, we recently acquired two FDA-approved drugs. In May 2021, we acquired global ownership rights, title, and interest to Qbrexza® (a medicated cloth towelette for the treatment of primary axillary hyperhidrosis) from Dermira, Inc., a wholly owned subsidiary of Eli Lilly and Company. In December 2020, we acquired an anti-itch product from Sun, which we plan to launch in the second half of 2021 or early 2022 in the U.S. We are in various stages of discussion for other opportunities, both commercial and development stage, that could drive additional growth in the business. Successful development and commercialization of any future in-licensed development stage or commercial drugs will require us to navigate the many laws and regulations of governmental authorities and regulatory agencies around the world, including the FDA, relating to the manufacture, development, approval and commercialization of investigational drugs. For development stage

drugs, we may require financial resources significantly in excess of those that may be received by the Company upon completion of this initial public offering, and it may take many years for us to receive marketing approval, if ever, for any in-licensed or acquired product candidate.

Excessive Underarm Sweating and the Current Standard of Care

Excessive underarm sweating, commonly referred to as primary axillary hyperhidrosis ("PAH"), is a rare disorder characterized by excessive sweating in the armpits. The exact cause of PAH is not known, and the disorder affects males and females equally. When excessive sweating occurs as part of some other disorder, it is said to be secondary hyperhidrosis, which is a more commonly encountered condition than is primary hyperhidrosis. According to a 2016 article published in the Archives of Dermatological Research, there are about 10 million people who suffer from PAH in the United States. The symptoms of PAH typically begin during childhood or puberty and may often, although not always, persist throughout a person's life. Affected individuals may experience a heightened reaction to certain stimuli that can cause sweating such as anxiety, pain, exercise, tension, caffeine, and/or nicotine. The symptoms of this disorder develop due to overactivity of certain sweat glands, and incidences may be precipitated by social and/or physical stress. Some people with PAH experience relief from the symptoms during adulthood without treatment or obvious reason for the remission.

Pharmacological treatment options for PAH include topical, oral and iontophoretic treatments.

Qbrexza (glycopyrronium 2.4% cloth) for the Treatment of Primary Axillary Hyperhidrosis

Qbrexza® (glycopyrronium 2.4%), a topical, once-daily anticholinergic cloth that was approved by the FDA in June 2018 for the treatment of PAH in adult and pediatric patients nine years of age and older. PAH is a medical condition with no known cause that results in underarm sweating beyond what is needed for normal body temperature regulation. Anticholinergics are a class of pharmaceutical products that exert their effect by blocking the action of acetylcholine, a neurotransmitter that transmits signals within the nervous system that are responsible for the activation of sweat glands. Qbrexza is applied directly to the skin and is designed to block underarm sweat production by inhibiting sweat gland activation. Qbrexza has Orange Book listed patents that extend through February of 2033.

The axillary hyperhidrosis market had approximately 400,000 prescriptions in 2020, according to Symphony Health, excluding prescriptions for OTC deodorants.

Acne and the Current Standard of Care

Acne, also known as acne vulgaris, is a common skin disorder characterized by a blockage of hair follicles, which are clogged with oil and dead skin cells. According to the American Academy of Dermatology, Acne is the most common skin condition in the US, affecting up to 50 million individuals annually. Approximately 85% of people between the ages of 12 and 24 experience at least a minor form of Acne. The disease is classified as mild, moderate or severe based on the severity of the disease progression, which is useful in identifying an appropriate treatment regimen. Mild acne is characterized by clogged hair follicles (known as comedones) that are either exposed to air (blackheads) or closed (whiteheads), with occasional inflammatory lesions which occur primarily on the face. Moderate acne is characterized by a higher presence of inflammatory lesions known as papules and pustules across the face and extending to the trunk. Severe acne is characterized by painful, deep lesions called nodules across the face, with extensive involvement of the trunk frequently.

Treatment options are based on the severity of disease, with certain drugs being reserved for more severe forms of the disease. Mild acne is addressed with dietary and lifestyle changes, along with over-the-counter ("OTC") and prescription topical agents. Other therapies with varying degrees of success include dermabrasion and chemical peels, light therapy and hormonal therapy such as birth control pills or spironolactone. Moderate acne is treated with more aggressive therapy including topical and oral antibiotics such as tetracyclines, which are particularly effective due to their antibacterial and anti-inflammatory properties, and other topical agents including benzoyl peroxide and retinoids. Severe acne is treated with combination therapies, often including oral antibiotics. For resistant cases, physicians may use a potent drug

known as isotretinoin (a vitamin A analog), which requires Risk Evaluation and Mitigation Strategy ("REMS") (safety) monitoring with regard to pregnancy.

Accutane for the Treatment of Severe Recalitrant Nodular Acne

Accutane® (isotretinoin 20mg, 30mg, and 40mg capsules USP) is indicated for treating severe recalcitrant nodular acne. Accutane is used to treat a type of severe recalcitrant nodular acne that has not been helped by other treatments, including antibiotics. Severe recalcitrant nodular acne occurs when many red, swollen, tender lumps form in the skin. Patients with severe nodular acne are at higher risk of scarring. Accutane belongs to a class of drugs that affects all four major pathogenic processes in acne: increased sebum production, irregular follicular desquamation, propionibacterium acnes proliferation and inflammation. Accutane has achieved a strong market position and is well known in the dermatology community.

The oral isotretinoin market had just under 2 million prescriptions in 2020, according to Symphony Health.

Targadox for the Treatment of Severe Acne

Targadox® (doxycycline hyclate immediate release 50mg tablets) is indicated as adjunctive therapy for severe acne, which is part of a class of oral antibiotics known as tetracyclines. The tetracycline class, which includes minocycline, doxycycline, sarecycline and tetracycline, is particularly effective in treatment for more severe forms of acne due to its antibacterial and anti-inflammatory properties. Targadox is the smallest doxycycline tablet and is considered easy to swallow, which is beneficial for the 40% of American adults with dysphagia, a condition in which patients experience difficulty swallowing pills. Targadox is gluten-free, lactose-free, animal byproduct-free, and GMO-free.

The oral doxycycline market had more than 19 million prescriptions in 2020, according to Symphony Health.

Ximino for the Treatment of Inflammatory Lesions of Non-Nodular Moderate to Severe Acne

Ximino® (minocycline hydrochloride extended-release 45mg, 90mg, and 135mg capsules) is indicated for treating inflammatory non-nodular lesions (pimples and red bumps) associated with moderate to severe acne. Minocycline is part of a class of oral antibiotics known as tetracyclines. Ximino encloses a small, uniform amount of the active pharmaceutical ingredient in a patented polymer wrapper through a controlled dosing capsular technology, known as Capsular Minotab Technology®, and provides a steady, controlled release of minocycline. The polymer technology in Ximino capsules is partially resistant to dissolution, so the minocycline is released over time, in a controlled manner. Ximino has Orange Book listed patents that extend through April of 2027.

The oral minocycline market had more than 3 million prescriptions in 2020, according to Symphony Health.

Fungal Infections of the Skin and the Current Standard of Care

Fungal skin infections, collectively referred to as dermatomycoses, are common infections caused by ringworms (tinea) and include such conditions as athlete's foot, jock itch and ringworm of the body. Tinea pedis, commonly known as athlete's foot, is a form of ringworm that usually develops between the toes. Symptoms include peeling, cracking and scaly feet, blisters, and skin that is red, softened, itching, or burning. Tinea cruris, commonly known as jock itch, is a form of ringworm that affects the groin. Tinea corporis, commonly known as ringworm of the body, is a fungal infection that appears on the body in which the outer part of the sore might be raised while the skin in the middle appears normal. Fungal infections caused by ringworm cause skin rashes that present as itchy, red, raised and scaly rings. These infections are easily transmissible between people, pets or contaminated objects or surfaces but are usually not serious in nature.

Treatment options typically involve topical OTC and prescription antifungal medications. Where difficult to administer topically, oral options (such as for toenail fungus or oral thrush) or suppositories

(such as for vaginal yeast infections) have proven to be more effective. OTC products typically include known antifungal ingredients such as clotrimazole, miconazole, terbinafine or ketoconazole. Prescription treatments are often reserved for more serious infection or for those in hard-to-treat areas. In conjunction with OTC or prescription medications, lifestyle adjustments, including daily washing of bedding and clothing during an infection, drying thoroughly after bathing, wearing loose clothing in affected areas and actively treating infected areas, can all contribute to disinfecting your surroundings and preventing a prolongation or recurrence of infection.

Exelderm for the Treatment of Fungal Skin Infections

Exelderm® (sulconazole nitrate 1%, cream and solution) is a broad-spectrum antifungal agent indicated for the treatment of ringworm-caused fungal infections including tinea pedis, tinea cruris, tinea corporis and tinea versicolor. The active pharmaceutical ingredient (sulconazole) acts by inhibiting fungal cell division and growth and has been shown to have broad activity against candida species, aspergillus species and dermatophytes. Exelderm cream or solution is administered externally only, whereby a small amount of cream or solution is gently massaged into the affected and surrounding areas and only requires a convenient once or twice daily application. However, when used to treat tinea pedis, for which Exelderm cream is also indicated, twice daily application is required.

The topical antifungal market had more than 9 million prescriptions in 2020, according to Symphony Health.

Pruritus (Itch) and the Current Standard of Care

Pruritus or itch is defined as an unpleasant sensation of the skin that provokes the urge to scratch. It is a characteristic feature of many skin diseases and an unusual sign of some systemic diseases. Pruritus may be localized or generalized and can occur as an acute or chronic condition. Itch can be caused by a number of conditions including: skin conditions such as dry skin, eczema, psoriasis, scabies, parasites, burns, scars, insect bites and hives. Depending on the cause of itchiness, skin may appear normal, red, rough or bumpy. Repeated scratching can cause raised thick areas of skin that might bleed or become infected.

Treatment for itch may include moisturizing daily, using gentle cleansers, and bathing with lukewarm water. Long-term relief requires identifying and treating the underlying cause of itchy skin. Common treatments are prescription medicated creams and lotions, moist dressings, and oral anti-itch medicines.

Anti-Itch Product for the Treatment of Pruritus

Our recently acquired anti-itch product is indicated to treat pruritis, scabies, and other skin itch conditions (“Anti-itch Product”). Our Anti-itch Product delivers prescription relief and is non-steroidal and antihistamine free. Topical steroids are effective against itch because they reduce inflammation that can cause itch. However, they are not recommended for long-term use. Antihistamines are also effective in treating some types of itch, but they too have drawbacks with continued use. We plan on launching our Anti-itch Product through our field sales force in the second half of 2021 or early 2022. Our Anti-itch Product is expected to be used in conjunction with topical steroids.

Our Anti-itch Product is expected to be used in conjunction with topical steroids. The topical pruritus market, inclusive of topical steroids, had more than 40 million prescriptions in 2020, according to Symphony Health.

Our Strategy

We are a highly focused, pharmaceutical company dedicated to developing and commercializing therapies for the treatment of dermatologic conditions that seeks to deliver value to patients, physicians and the healthcare system, as well as to our stakeholders. Our strategic priorities include continuing to augment and grow our product portfolio and organization in order to maximize the probabilities of sustainable long-term value creation. This will consist of both commercial execution on our existing product portfolio, including lifecycle management, as well as investing in additional growth strategies through product and company acquisitions, licensing, or developing new products.

Competitive Strengths

To successfully execute our strategy, we must continue to capitalize on our following core strengths:

- Commercial leadership of our management team with a track record of commercial execution We have a highly skilled and customer-focused management team in critical leadership positions across our Company. Our senior management team has over 135 years of sales and marketing experience in the pharmaceutical industry and a proven track record of developing businesses and creating value. We have developed, launched, commercialized, and managed brands, generating over $3 billion in peak sales, collectively, at leading dermatology organizations. This experience includes improving business performance through organic revenue growth, maximizing operational efficiencies and through the identification, consummation and integration of licensing and acquisition opportunities. Our senior management team has extensive roots in the dermatology industry, with many of them having worked at and held senior positions with Medicis, leading up to the company's acquisition by Valeant for $2.6 billion in 2012. Our strategic approach leverages our management team's experience with the capabilities of our field sales force to drive performance based on prescribing habits, brand preferences, promotional strategies and profit optimization while focusing on customer service excellence for our providers and their patients. Our execution to date has led to market-leading positions for three of our established brands, Targadox, Ximino, and Exelderm, in each of their respective markets.
- Performance and experience of our accomplished field sales force Our seasoned field sales force includes 68 professionals with an average tenure of over 10 years of experience in dermatology sales. Each of these individuals have deep-rooted and longstanding customer relationships in their respective territories. We have strategically optimized our sales outreach to cover over 80% of dermatologists in the Top 50 U.S. metropolitan statistical areas and over 70% of the overall dermatology prescribing market. We are able to leverage the experience of our field sales force to create a tailored and entrepreneurial compensation plan that incentivizes our field sales force and aligns their activities with our corporate performance and growth objectives. We intend to continue to build a team of committed, experienced employees and to engage with patients and members of the dermatology community. Additionally, we believe that consolidation in the medical dermatology industry has resulted in an enhanced opportunity for a medical dermatology-focused company to build relationships with these stakeholders and has made available a large and growing talent pool of experienced individuals who can make significant contributions to our Company.
- Unique and differentiated access and distribution model We have a unique and differentiated access and distribution network of over 600 specialty pharmacies and wholesalers, where we directly sell our products, with limited distribution through traditional national wholesalers. This decentralized approach allows us to maximize our brand equity across our product portfolio through strategic relationships directly with pharmacies and allows us to provide exceptional customer service and access to patients and physicians.
- Active business development initiative. Business development plays a vital role in our growth strategy as we look to build scale. We consistently evaluate both strategic add-on deals that leverage our existing infrastructure, as well as more transformative assets that would require building out or restructuring our field sales force. We have extensive relationships in the industry that help us stay abreast of developments in our space and continually monitor new opportunities. We believe that we are an ideal partner for development stage companies with limited or no commercial capabilities, as well as established pharmaceutical companies looking to deprioritize their dermatology portfolio. We have ongoing discussions with an array of companies, including traditional large pharma, mid-size specialty pharma companies and smaller companies that focus on research and development, although we have not entered into any definitive agreements or arrangements.
- Focus on cost management and efficient capital allocation We have operated in a cost-conscious and capital efficient manner since inception. In addition to our internal leadership and management team, we have access to over 30 Fortress employees who possess significant expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations and manufacturing. In connection with the closing of this offering, we intend to enter into a shared services agreement with Fortress for them to continue to provide consulting services and

for the continued use of their personnel. As part of our emphasis on cost effectiveness with our resources, we endeavor to structure licenses and product acquisitions for future product opportunities in a capital efficient manner that allows us to minimize indebtedness and compensate partner companies through future profits and commercial benchmarks.

Major Customers

We primarily sell our prescription products to specialty pharmacies, independent wholesalers, and distributors with limited sales through the traditional national wholesaler channel. Our wholesalers and distributors purchase products from us and, in turn, supply products to retail drug store chains, independent pharmacies and managed care organizations. Customers in the managed care market include health maintenance organizations, group purchasing organizations, nursing homes, clinics, pharmacy benefit management companies and mail order customers.

License & Collaboration Agreements and Acquisitions

We continue to seek to enhance our product line and develop a balanced portfolio of differentiated products through product acquisitions and in-licensing or acquiring rights to products and technologies from third parties. We intend to enter into strategic alliances and collaborative arrangements with third parties, which will give us rights to develop, manufacture, market and/or commercialize pharmaceutical products, the rights to which are primarily owned by these third parties. These alliances and arrangements can take many forms, including licensing arrangements, co-development and co-marketing agreements, co-promotion arrangements, research collaborations and joint ventures. Such alliances and arrangements will potentially enable us to share the risk of incurring all research and development expenses that do not lead to revenue-generating products. However, because profits from alliance products are shared with the counterparties to the collaborative arrangement, the gross margins on alliance products are generally lower, sometimes substantially so, than the gross margins that could be achieved had we not opted for a development partner.

Environmental Matters

Our operations are subject to substantial federal, state and local environmental laws and regulations concerning, among other matters, the generation, handling, storage, transportation, treatment and disposal of, and exposure to, hazardous substances. Violation of these laws and regulations, which may change, can lead to substantial fines and penalties. Many of our third-party operations require environmental permits and controls to prevent and limit pollution of the environment. We believe that the facilities of our third-party service providers are in substantial compliance with applicable environmental laws and regulations and we do not believe that future compliance will have a material adverse effect on our business, financial condition, results of operations or cash flows.

Employees and Human Capital Management

As of July 1, 2021, we had 82 employees and contractors. These employees and contractors include 68 in sales as well as 14 in marketing, general and administrative positions. We currently rely, and may continue to rely, on professional employer organizations and staffing organizations for the employment of our field sales force. Additionally, we have retained a number of expert advisors and consultants that help navigate us through different aspects of our business. We consider our relations with our employees to be good and have not experienced any work stoppages, slowdowns or other serious labor problems that have materially impeded our business operations.

Our human capital management objectives include, as applicable, identifying, recruiting, retaining, incentivizing, and integrating our new and existing employees. The principal purpose of our equity incentive plan is to attract, retain, and motivate selected employees, consultants, and directors through the granting of stock-based compensation awards and cash-based bonus awards.

Additionally, we have access to over 30 Fortress employees and consultants, who possess significant expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations and manufacturing.

Geographic Areas

All of our product revenues are generated from operations or otherwise earned within the U.S.

Seasonality of Business

Our business is affected by the standard annual insurance deductible resets, as well as the purchasing patterns and concentration of our customers, however, our business is not materially impacted by seasonality. There are no assurances that these historical trends will continue in the future.

Relationship with Fortress

General

We have a seven-year operating history. We are, and anticipate remaining after this offering, a majority owned subsidiary of Fortress. Fortress is a biopharmaceutical company dedicated to acquiring, developing and commercializing pharmaceutical and biotechnology products and product candidates at its majority-owned and majority-controlled subsidiaries and joint ventures, and at entities founded by Fortress and in which it maintains significant minority ownership positions. Fortress has a talented and experienced business development team, comprised of scientists, doctors, and finance professionals, who identify, evaluate, and propose for our consideration promising products and product candidates.

Fortress Note

Since our inception in 2014, Fortress has funded our operations through a working capital loan pursuant to the terms of a future advance promissory note (the "Fortress Note"). Pursuant to the Fortress Note, no further advances can be made if the outstanding principal exceeds $20.0 million. All advances to us bear no interest. As of December 31, 2020 and June 30, 2021, the balance of the Fortress Note was $5.2 million. All principal amounts under the Fortress Note are due on or before December 31, 2024.

Research & Development Opportunities

We recently entered into an agreement with Dr. Reddy's Laboratories, Ltd. ("DRL"), in which we agreed to fund the Phase III studies for the DFD-29 development program and subsequently seek NDA approval. In addition, we are also required to pay for certain regulatory costs and expenses for services to be provided by DRL. Although we do not currently have any other development-stage assets, our near-term focus may also be to acquire and sponsor, co-sponsor and/or invest in additional clinical-stage or preclinical programs that have a strategic fit with our corporate strategy. We actively and routinely evaluate development-stage opportunities in the ordinary course of our business development activities.

Product Licensing Agreements and Acquisitions

DFD-29 Agreement

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with Dr. Reddy's Laboratories, Ltd. ("DRL") to obtain the global rights for the development and commercialization of DFD-29, a late-stage development modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea (the "DFD-29 Agreement"). We acquired global rights to DFD-29, including in the U.S. and Europe, except that Dr. Reddy's has retained certain rights to the program in select markets including Brazil, Russia, India and China. Pursuant to the DFD-29 Agreement, we agreed to pay an upfront payment of $10.0 million, comprised of a $2 million payment upon execution and $8 million payable 90 days following execution, with additional contingent regulatory, commercial, and corporate-based milestone payments, totaling up to $163.0 million. Royalties ranging from ten percent to twenty percent are payable on net sales of the product. Royalties are payable in each country until the last to expire patent in such country expires. Royalties are subject to a 50% reduction in the event that a generic competitor launches in an applicable country where we market and sell the product. We are responsible for the prosecution and enforcement of patents licensed under the agreement. The agreement contains customary representations, warranties, and indemnities, and title transfers to us on the date of achievement of certain regulatory milestones set forth in the agreement, after which our licenses become our acquired assets. Each party may

also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events. Additionally, we agreed to fund and oversee the Phase III clinical trials, approximating $24.0 million, based upon the most recent development plan and budget, which is subject to change.

The DFD-29 Agreement will remain in effect on a country-by-county basis until the expiration of the revenue percentage term in the relevant country, which period begins on the first commercial sale of a product in that country and ends upon the expiration or invalidation date of the last revenue generating patent in such country. The DFD-29 Agreement terminates in its entirety upon the expiry of the revenue percentage term in the last country covered under the DFD-29 Agreement. Either party may terminate the DFD-29 Agreement upon material breach, subject to the cure period applicable to the relevant breach.

Qbrexza Agreement

On March 31, 2021, we executed an asset purchase agreement for Qbrexza® (the "Qbrexza APA") with Dermira, Inc., a wholly owned subsidiary of Eli Lilly and Company ("Dermira"), pursuant to which we acquired global ownership to Qbrexza® (glycopyrronium), a prescription cloth towelette approved to treat primary axillary hyperhidrosis in people nine years of age and older. The transaction closed on May 14, 2021, and pursuant to the Qbrexza APA, we made an upfront $12.5 million cash payment to Dermira. Dermira is eligible to receive cash payments of up to $144 million in the aggregate upon the achievement of certain milestones. For the first two years, we are required to pay royalties on sales ranging from the mid-thirty to the mid-twenty percent and, thereafter royalties ranging from the lower teen digits to the upper teen digits are payable on sales of Qbrexza products. Subject to certain reductions in the event that a generic competitor enters the market, royalties are payable for a period of eight years. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events.

As part of our agreement with Dermira, we were assigned an exclusive license agreement with Rose University ("Rose U") pursuant to which we obtained a worldwide exclusive license within a field of use including hyperhidrosis to practice, enforce and otherwise exploit certain patent rights, know-how and data related to Qbrexza. The license agreement with Rose U included a sublicense of certain data and an assignment of certain regulatory filings which Rose U had obtained from Stiefel Laboratories ("Stiefel"). In connection with the license agreement, we assumed Rose U's obligations to Stiefel to use commercially reasonable efforts to develop and commercialize products using the licensed patent rights, know-how and data.

Pursuant to these agreements with Rose U and the related agreement with Stiefel with respect to Qbrexza, we are obligated to pay Rose U low-to-mid single-digit royalties on net product sales and low double-digit royalties on sublicense fees and certain milestone, royalty and other contingent payments received from sublicensees, to the extent such amounts are in excess of the milestone and royalty payments we are obligated to pay Rose U directly upon the events or sales triggering such payments.

We are permitted to grant sublicenses to the licensed rights and may assign the agreements upon our acquisition or that of our assets that relate to the license agreement. We may terminate the license agreement if Rose U experiences certain insolvency events or if Rose U commits a material breach of the license agreement, subject to applicable cure provisions. Rose U may terminate the license in certain circumstances if we experience certain insolvency events or if we commit a material breach of the license agreement or if we cause Rose U to be in material breach of its license agreement with Stiefel, subject in each case to applicable cure provisions. Subject to earlier termination, the license agreement remains in effect until 15 years following the first commercial sale of a licensed product have elapsed or, if later, the date that the last patent or patent application in the licensed patent rights has expired or been revoked, invalidated or abandoned. As of June 30, 2021, the last-to-expire issued patent relating to Qbrexza that we license under the license agreement with Rose U expires in 2029.

Additionally, we assumed the license agreement between Dermira and Maruho Co., Ltd, operating in Japan ("Maruho"), which granted Maruho exclusive rights to develop and commercialize Qbrexza in Japan whereby Maruho is required to pay us certain milestones and royalties. We commenced sales of this product in May 2021.

Accutane Agreement

On July 29, 2020, we entered into a license and supply agreement for Accutane® ("Accutane Agreement") with a third party. Pursuant to the Accutane Agreement, we agreed to pay $5.0 million, comprised of an upfront payment of $1.0 million paid upon execution, with additional milestone payments totaling $4.0 million. To date, we have paid $1.0 million of the additional milestone payments. Three additional milestone payments totaling $17.0 million are contingent upon the achievement of certain net sales milestones. Royalties in the mid-single digits based on net sales, subject to specified reductions are also due.

The term of the agreement is ten years and renewable upon mutual agreement. We are required to pay royalties during the term of the agreement. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events and we may terminate for upon 180 days written notice to the other party. We commenced sales of this product in April 2021.

Targadox Agreement

On March 10, 2015, we entered into a license and supply agreement (as amended) for Targadox® (the "Targadox Agreement") with PuraCap International LLC n/k/a Caribe Holdings, Inc. ("Caribe"). We made an upfront payment of $1.3 million. Further payments will be made based on a revenue sharing arrangement, no additional licensing or milestone payments are required. The term of the agreement is ten years and automatically renews for three year periods unless either party provides notice of its intent not to renew at least 180 days prior to the expiration of the applicable term. Under our revenue sharing arrangement, we are entitled to retain a majority of the net profits and pay Caribe portion of the net profits after deducting certain commercial, marketing and sales expenses during the term of the agreement. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events. We commenced sales of this product in October 2016.

Ximino Agreement

On July 22, 2019, we entered into an asset purchase agreement for Ximino® (the "Ximino APA") with Sun Pharmaceutical Industries, Inc. ("Sun"). Pursuant to the Ximino APA, total consideration is $9.4 million, with an upfront payment of $2.4 million, payable within 60 days after execution on September 22, 2019.

The remaining $7.0 million will be made starting on the second anniversary and for the next four anniversaries of the Ximino APA thereafter. In addition, we are obligated to pay royalties in the mid-single digits based on net sales of Ximino, subject to specified reductions until the end of 2022. The agreement contains customary representations, warranties, and indemnities. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events. No additional licensing or milestone payments are required. We commenced sales of this product in August 2019.

Exelderm Agreement

On August 31, 2018, we entered into an asset purchase agreement for Exelderm® (the "Exelderm APA") with Sun. Pursuant to the Exelderm APA, total consideration is $1.6 million, comprised of an upfront payment of $1.2 million payable within 60 days after execution on October 31, 2018. The remaining milestone payment was contingent upon net sales reaching a certain threshold, at which point a $0.4 million payment became due. This threshold was achieved in 2020 and paid in early 2021. We are obligated to pay royalties in the mid-single digits based on net sales of Exelderm until the end of 2023, and no additional licensing or milestone payments are required. Each party may also terminate the agreement for material breach by the other party or for certain bankruptcy or insolvency related events. We commenced sales of this product in August 2018.

Anti-Itch Product Agreement

On December 18, 2020, we entered an asset purchase agreement for our Anti-itch Product (the "Anti- itch APA") with Sun. Pursuant to the Anti-itch APA, total consideration is $4.0 million, comprised of an

upfront payment of $2.0 million, payable upon execution. Through July 1, 2021, we have paid $3.0 million and have additional future payments of $1.0 million. The agreement contains customary representations, warranties, and indemnities. Each party may terminate the agreement for material breach by the other party. There are no subsequent milestone payments or royalties beyond the aforementioned payments. We intend to launch this product in the second half of 2021 or early 2022.

Research and Development

On June 29, 2021, we entered into a license, collaboration, and assignment agreement with DRL to obtain the global rights for the development and commercialization of DFD-29, a late-stage development modified release oral minocycline that is being evaluated for the treatment of inflammatory lesions of rosacea. We acquired global rights to DFD-29, including in the U.S. and Europe, except that Dr. Reddy's has retained certain rights to the program in select markets including Brazil, Russia, India and China. Through this collaboration, the parties will work together to complete the development of DFD-29, which includes conducting two Phase III studies to assess the efficacy, safety and tolerability of oral DFD-29 for the treatment of rosacea and the regulatory submission of a new drug application under Section 505(b)(2) of the FDCA. Dr. Reddy's will provide development support including the monitoring of two Phase III clinical trials. The Phase III trials have not yet begun.

The Phase II study, conducted in Germany, was a multi-center, randomized, double-blinded, parallel- group, controlled study that assessed the efficacy, safety and tolerability of oral DFD-29 (20 mg and 40 mg) extended release minocycline HCl capsules for the treatment of inflammatory lesions of rosacea over 16 weeks. Initial patient enrollment in the Phase II study included 205 male and female subjects with papulopustular rosacea. 160 subjects completed the study. Each subject was allocated to one of the following treatment groups, and received 1 capsule once daily, in the morning, for 16 weeks: i) DFD-29 40 mg extended release capsules (with 47 subjects at completion); ii) DFD-29 20 mg extended release capsules (with 38 subjects at completion); iii) Oraycea® (doxycycline) capsules (with 40 subjects at completion); and iv) placebo capsules (with 35 subjects at completion). The study showed that DFD-29 40 mg had statistical significance to both placebo and the active control, Oraycea® (German equivalent of U.S. marketed Oracea®), on both co-primary endpoints — proportion of subjects with Investigator's Global Assessment treatment success (grade 0 or 1 with at least a two grade reduction from baseline at week 16) and total inflammatory lesion count reduction from baseline to week 16. More information on the DFD-29 Phase II study can be found at clinicaltrials.gov. Highly statistically significant difference in IGA success could be shown for DFD-29 40mg compared to placebo ($p < 0.0001$) as well as compared to Oraycea ($p= 0.0010$). Highly statistically significant treatment difference was also observed in the co-primary endpoint mean change in total inflammatory lesion count as well in both DFD-29 40mg compared to placebo ($p < 0.0001$) and DFD-29 40 mg compared to Oraycea ($p = 0.0004$). All statistical tests used were two-sided, with $\alpha=0.05$ as level of significance. There were no related serious adverse events reported during the study for those subjects who were studied with DFD-29 40mg.

We rely on, and partner with, other companies to develop product candidates and third-party contract research organizations ("CROs") to conduct clinical trials on our behalf. For example, our agreement with DRL for the regulatory submission and approval for DFD-29 is heavily reliant on DRL's ability to conduct clinical manufacturing for clinical supply of product, attending FDA meetings, advising on the Phase III study design, assisting in identifying third-party CROs, and drafting and advising on the new drug application and other regulatory submissions. Our reliance on third-party CROs may adversely affect our development timelines if the third-party CROs do not meet the requirements or satisfy the obligations required to obtain regulatory approval. Any significant delays caused by our collaboration partner or third-party CROs may have an adverse effect on our development timelines or otherwise may delay approval and commercialization of DFD-29.

Intellectual Property

General

We rely on a combination of contractual provisions, confidentiality policies and procedures and patent, trademark, copyright and trade secrecy laws to protect the proprietary aspects of our technology and business. Three of our marketed products, Accutane, Targadox, and Exelderm, do not have patent protection

and/or otherwise not eligible for patent protection. As part of our development and acquisition strategy, we place a strong emphasis on the patent protection for potential products. Two of our marketed products, Qbrexza and Ximino, as well as DFD-29, currently have patent protection.

As of June 2021, we own or have an exclusive license to 22 issued U.S. patents and 41 issued foreign patents, which include granted European patent rights that have been validated in selected EP member states (Switzerland (CH), Germany (DE), Spain (ES), France (FR), Great Britain (GB), Ireland (IE), and Italy (IT)), Australia, Canada, Mexico, Israel, Japan, Hong Kong, Korea, and New Zealand, Singapore, and South Africa, and six pending U.S. patent applications, one pending Patent Cooperation Treaty application, and 16 pending foreign patent applications. Of these patents and patent applications:

- There are 15 issued U.S. patents, 28 issued foreign patents (AU, CA, selected EP member states, Mexico, Japan, Hong Kong, Korea, New Zealand, Singapore, and South Africa), four pending U.S. patent applications and eight pending foreign applications (in Canada, the European Patent Office, Mexico, Japan, Hong Kong, and Korea) as well as one pending PCT application, all relating to Qbrexza. We own 11 of the issued U.S. patents, three of the pending U.S. patent applications, 18 of the issued foreign patents, and six of the pending foreign applications, and have exclusively licensed from Rose U worldwide rights to four of the issued U.S. patents, one pending U.S. patent application, ten issued foreign patents, and two pending foreign patent applications. The issued Qbrexza patents contain claims directed to individually packaged wipes for the treatment of hyperhidrosis where the wipes contain a composition comprising Qbrexza or other related compounds, and methods of alleviating hyperhidrosis using such compositions and contain claims directed to compositions comprising Qbrexza or other related compounds, individually packaged wipes comprising such compositions, absorbent pads comprising Qbrexza pharmaceutical compositions and methods of treating hyperhidrosis with topical administration of Qbrexza or other related compounds. The issued U.S. and foreign patents relating to Qbrexza will expire between 2028 and 2033 and the pending U.S. and foreign patent applications relating to Qbrexza, if issued, will expire between 2028 and 2034.
- With regard to DFD-29, we have an exclusive license to one issued U.S. patent, one allowed U.S. patent application, one pending U.S. application, and eight foreign pending patent applications (one in each Australia, Canada, Europe, Japan, Korea, Mexico, New Zealand, and South Africa) covering methods of treating an inflammatory skin condition by selecting and administering an oral composition comprising reduced dose of minocycline and the relevant pharmacokinetic parameters, and we intend to pursue composition-of-matter patents, where possible, and dosage and formulation patents, as well as method-of-use patents on novel indications for known compounds. The issued U.S. patent will expire in 2039.

In addition, we have an exclusive license to patents related to Ximino, including six issued U.S. patents. These patents cover the Ximino, methods of treatment, and related dosage forms and strengths, and will expire between 2025 and 2027.

We also use other forms of protection, such as trademark, copyright, and trade secret protection, to protect our intellectual property, particularly where we do not believe patent protection is appropriate or obtainable. We aim to take advantage of all of the intellectual property rights that are available to us and believe that this comprehensive approach will provide us with proprietary positions for our product candidates, where available. Patents extend for varying periods according to the date of patent filing or grant and the legal term of patents in various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country.

Our goal is to obtain, maintain and enforce patent protection for our products, formulations, processes, methods and other proprietary technologies, to preserve our trade secrets, and to operate without infringing on the proprietary rights of other parties, both in the United States and in other countries. Our policy is to actively seek to obtain, where appropriate, the broadest intellectual property protection possible for any product candidates, proprietary information and proprietary technology through a combination of contractual arrangements and patents, both in the U.S. and elsewhere in the world.

Patents and other proprietary rights are crucial to the development of our business. We will be able to protect our proprietary technologies from unauthorized use by third parties only to the extent that our proprietary rights are covered by valid and enforceable patents, supported by regulatory exclusivity, or are effectively maintained as trade secrets.

Generally, patent applications in the U.S. are maintained in secrecy for a period of 18 months or more. The patent positions of biotechnology and pharmaceutical companies are highly uncertain and involve complex legal and factual questions. Therefore, we cannot predict the breadth of claims allowed in biotechnology and pharmaceutical patents, or their enforceability. To date, there has been no consistent policy regarding the breadth of claims allowed in biotechnology patents. Third parties or competitors may challenge or circumvent our patents or patent applications, if issued. If our competitors prepare and file patent applications in the U.S. that claim technology also claimed by us, we may have to participate in derivation proceedings declared by the USPTO to determine proper inventorship of a claimed of invention, which could result in substantial cost, even if the eventual outcome is favorable to us. Because of the extensive time required for development, testing and regulatory review of a potential product, it is possible that before we commercialize any of our products, any related patent may expire or remain in existence for only a short period following commercialization, thus reducing any advantage of the patent. However, the life of a patent covering a product that has been subject to regulatory approval may be extended through the patent term restoration program, although any such extension could still be minimal.

If a patent is issued to a third party containing one or more preclusive or conflicting claims, and those claims are ultimately determined to be valid and enforceable, we may be required to obtain a license under such patent or to develop or obtain alternative technology, neither of which may be possible. In the event of litigation involving a third-party claim, an adverse outcome in the litigation could subject us to significant liabilities to such third party, require us to seek a license under the disputed rights of such third party, and/or require us to cease use of the technology. Moreover, our breach of an existing license or failure to obtain a license to technology required to commercialize our products may seriously harm our business. We also may need to commence litigation to enforce any patents issued to us or to determine the scope and validity of third-party proprietary rights. Litigation would involve substantial costs.

Other Intellectual Property Rights

We depend upon trademarks, trade secrets, and continuing technological advances to develop and maintain our competitive position. We also depend upon the skills, knowledge and experience of our scientific and technical personnel, as well as that of our advisors, consultants and other contractors. This knowledge and experience we call “know-how.” To help protect our proprietary know-how that is not patentable, and for inventions for which patents may be difficult to enforce, we rely on trade secret protection and confidentiality agreements to protect our interests. To this end, we require all employees, scientific advisors, consultants, collaborators and other contractors, upon commencement of a relationship with us, to enter into confidentiality agreements, which prohibit the disclosure of confidential information and, in the case of parties other than our research and development collaborators, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements are designed to protect our proprietary information and to grant us ownership of technologies that are developed in connection with their relationship with us. These agreements may not, however, provide protection for our trade secrets in the event of unauthorized disclosure of such information.

There can be no assurance that any of our patents, licenses or other intellectual property rights will afford us any protection from competition or that our confidentiality agreements will not be breached, that we will have adequate remedies for any breach, that others will not independently develop equivalent proprietary information or that other third parties will not otherwise gain access to our trade secrets and other intellectual property.

We may find it necessary to initiate litigation to enforce our patent rights, to protect our intellectual property or trade secrets or to determine the scope and validity of the proprietary rights of others. Litigation is costly and time-consuming and there can be no assurance that our litigation expenses will not be significant in the future or that we will prevail in any such litigation.

Competition

Pharmaceutical Industry

Our competitors include pharmaceutical companies and biotechnology companies, as well as universities and public and private research institutions. In addition, companies that are active in different but related fields represent substantial competition for us. Many of our competitors have significantly greater capital resources, larger research and development staffs and facilities and greater experience in drug development, regulation, manufacturing and marketing than we do. These organizations also compete with us to recruit qualified personnel, attract partners for joint ventures or other collaborations, and license technologies that are competitive with ours. To compete successfully in this industry, we must identify novel and unique drugs or methods of treatment and then complete the development of those drugs as treatments in advance of our competitors.

Dermatology Sector

The dermatology competitive landscape is highly fragmented, with a large number of midsize and smaller companies competing in both the prescription sector and the OTC sector. Our competitors are pursuing the development and/or acquisition of pharmaceuticals, medical devices and OTC products that target the same diseases and conditions that we are targeting in dermatology. Competitive factors vary by product line and geographic area in which our products are sold. The principal methods of competition for our products include quality, efficacy, market acceptance, price, and marketing and promotional efforts.

Branded products often must compete with therapeutically similar branded or generic products or with generic equivalents. Such competition frequently increases over time. For example, if competitors introduce new products, delivery systems or processes with therapeutic or cost advantages, our products could be subject to progressive price reductions and/or decreased volume of sales. To successfully compete for business, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care. Accordingly, we face pressure to continually seek out technological innovations and to market our products effectively.

Our major competitors, including Galderma Laboratories, Vyne Therapeutics, Sol-Gel Technologies, Almirall, Verrica Pharmaceuticals, Cassiopea, MC2 Therapeutics, EPI Health, Sun Pharma, Leo Pharma, Arcutis Biotherapeutics, Mayne Pharma, and Ortho Dermatologics, among others, vary depending on therapeutic and product category, dosage strength and drug-delivery systems, among other factors.

Generic Competition

We face increased competition from manufacturers of generic pharmaceutical products, who may submit applications to the FDA seeking to market generic versions of our products. In connection with these applications, the generic drug companies may seek to challenge the validity and enforceability of our patents through litigation. When patents covering certain of our products (if applicable) expire or are successfully challenged through litigation or in USPTO proceedings, if a generic company launches a competing product “at risk,” or when the regulatory or licensed exclusivity for our products (if applicable) expires or is otherwise lost, we may face generic competition as a result. Generic versions are generally significantly less expensive than branded versions, and, where available, may be required to be utilized before or in preference to the branded version under third-party reimbursement programs, or substituted by pharmacies. Accordingly, when a branded product loses its market exclusivity, it normally faces intense price competition from generic forms of the product. To successfully compete for business with managed care and pharmacy benefits management organizations, we must often demonstrate that our products offer not only medical benefits, but also cost advantages as compared with other forms of care. Generic products generally face intense competition from other generic equivalents (including authorized generics) and therapeutically similar branded or generic products.

Supply and Manufacturing

We have limited experience in manufacturing products for clinical or commercial purposes, and we currently do not have any internal manufacturing capabilities. We currently rely upon multiple contract manufacturers to produce our products and clinical supply of product candidates and will continue to rely

upon contract manufacturers for any current or future product candidates under current cGMP regulations for use in pre-clinical and clinical activities. Due to the risks associated with reliance on third-party manufacturing risk, as part of our current and future strategy of licensing, acquiring, or the future development of assets, we currently, and will continue to, secure manufacturing agreements with either a counterparty to a transaction, with one or more of our contract manufacturers or additional contract manufacturers. As with any supply program, obtaining raw materials of the correct quality cannot be guaranteed, and we cannot ensure that we will be successful. Our third-party manufacturers have a limited number of facilities in which our product candidates can be produced and may have limited experience in manufacturing our product candidates in quantities sufficient for commercialization. Our third-party manufacturers will have other clients and may have other priorities that could affect their ability to perform the work satisfactorily and/or on a timely basis. Both of these occurrences would be beyond our control. We expect to similarly rely on contract manufacturing relationships for any products that we may in-license or acquire in the future. However, there can be no assurance that we will be able to successfully contract with such manufacturers on terms acceptable to us, or at all.

Contract manufacturers are subject to ongoing periodic and unannounced inspections by the FDA, the Drug Enforcement Administration and corresponding state and European agencies to ensure strict compliance with cGMPs and other state and federal regulations. We do not have control over third-party manufacturers' compliance with these regulations and standards, other than through contractual obligations. If they are deemed out of compliance with cGMPs, product recalls could result, inventory could be destroyed, production could be stopped, and supplies could be delayed or otherwise disrupted.

If we need to change manufacturers during the clinical or development stage for product candidates or after commercialization for our approved products, the FDA and corresponding foreign regulatory agencies must approve these new manufacturers in advance, which will involve testing and additional inspections to ensure compliance with FDA regulations and standards and may require significant lead times and delay. Furthermore, switching manufacturers may be difficult because the number of potential manufacturers is limited. It may be difficult or impossible for us to find a replacement manufacturer quickly or on terms acceptable to us, or at all.

Government and Industry Regulations — Overview

FDA Regulations

Numerous governmental authorities, principally the FDA and corresponding state and foreign regulatory agencies, impose substantial regulations upon any potential clinical development and the manufacture and marketing of our products. Before marketing in the U.S., any drug that we may develop must undergo rigorous pre-clinical testing and clinical trials and an extensive regulatory approval process implemented by the FDA under the FDCA. The FDA regulates, among other things, the pre-clinical and clinical testing, safety, efficacy, approval, manufacturing, record keeping, lot traceability, individual serialization, adverse event reporting, packaging, labeling, storage, advertising, promotion, export, sale and distribution of biopharmaceutical products.

The regulatory review and approval process is lengthy, expensive and uncertain. In the event that we acquire or develop a clinical stage asset, we will be required to submit extensive pre-clinical and clinical data and supporting information to the FDA for each indication or use to establish a product candidate's safety and efficacy before we can secure FDA approval to market or sell a product in the U.S. The approval process may take many years, depending on the stage of development of a target asset, and requires the expenditure of substantial resources and may involve ongoing requirements for post-marketing studies or surveillance.

Clinical testing must meet requirements for institutional review board oversight, informed consent and good clinical practices, and must be conducted pursuant to an Investigational New Drug Application ("IND"), unless exempted.

For purposes of NDA approval, clinical trials are typically conducted in the following sequential phases:

Phase 1: The drug is administered to a small group of humans, either healthy volunteers or patients, to test for safety, dosage tolerance, absorption, metabolism, excretion and clinical pharmacology.

Phase 2: Studies are conducted on a larger number of patients to assess the efficacy of the product, to ascertain dose tolerance and the optimal dose range, and to gather additional data relating to safety and potential adverse events.

Phase 3: Studies establish safety and efficacy in an expanded patient population.

Phase 4: The FDA may require Phase 4 post-marketing studies to find out more about the drug's long-term risks, benefits, and optimal use, or to test the drug in different populations.

The length of time necessary to complete clinical trials varies significantly and may be difficult to predict. Clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals. Additional factors that can cause delay or termination in future clinical trials, or that may increase the costs of these trials, include:

- slow patient enrollment due to the nature of the clinical trial plan, the proximity of patients to clinical sites, the eligibility criteria for participation in the study or other factors;
- inadequately trained or insufficient personnel at the study site to assist in overseeing and monitoring clinical trials or delays in approvals from a study site's review board;
- longer treatment time required to demonstrate efficacy or determine the appropriate product dose;
- insufficient supply of the drug candidates;
- adverse medical events or side effects in treated patients; and
- ineffectiveness of the drug candidates.

In addition, the FDA, equivalent foreign regulatory authority, or a data safety monitoring committee for a trial may place a clinical trial on hold or terminate it if it concludes that subjects are being exposed to an unacceptable health risk, or for futility. Any drug is likely to produce some toxicity or undesirable side effects in animals and in humans when administered at sufficiently high doses and/or for a sufficiently long period of time. Unacceptable toxicity or side effects may occur at any dose level at any time in the course of studies in animals designed to identify unacceptable effects of a drug candidate, known as toxicological studies, or clinical trials of drug candidates. The appearance of any unacceptable toxicity or side effect could cause us or regulatory authorities to interrupt, limit, delay or abort the development of any of our drug candidates and could ultimately prevent approval by the FDA or foreign regulatory authorities for any or all targeted indications.

Sponsors of drugs may apply for a special protocol assessment ("SPA") from the FDA. The SPA process is a procedure by which the FDA provides official evaluation and written guidance on the design and size of proposed protocols that are intended to form the basis for a new drug application. However, final marketing approval depends on the results of efficacy, the adverse event profile and an evaluation of the benefit/risk of treatment demonstrated in the Phase 3 trial. The SPA agreement may only be changed through a written agreement between the sponsor and the FDA, or if the FDA becomes aware of a substantial scientific issue essential to product safety or efficacy.

Before receiving FDA approval to market a product, we must demonstrate that the product is safe and effective for its intended use by submitting to the FDA an NDA, ANDA, 510(K) or Biologics License Application ("BLA") containing the pre-clinical and clinical data that have been accumulated, together with chemistry and manufacturing and controls specifications and information, and proposed labeling, among other things. The FDA may refuse to accept an NDA, ANDA or BLA for filing if certain content criteria are not met and, even after accepting an NDA, ANDA, 510(K) or BLA, the FDA may often require additional information, including clinical data, before approval of marketing a product.

It is also becoming more common for the FDA to request a Risk Evaluation and Mitigation Strategy ("REMS"), as part of an NDA, ANDA, 510(K) or BLA. The REMS plan contains post-market obligations of the sponsor to train prescribing physicians, monitor off-label drug use, and conduct sufficient Phase 4 follow-up studies and registries to ensure the continued safe use of the drug.

As part of the approval process, the FDA must inspect and approve each manufacturing facility. Among the conditions of approval is the requirement that a manufacturer's quality control and manufacturing procedures conform to cGMP. Manufacturers must expend significant time, money and effort to ensure continued compliance, and the FDA conducts periodic inspections to certify compliance. It may be difficult for our manufacturers or us to comply with the applicable cGMP, as interpreted by the FDA, and other FDA regulatory requirements. If we, or our contract manufacturers, fail to comply, then the FDA may not allow us to market products that have been affected by the failure.

If the FDA grants approval, the approval will be limited to those conditions and patient populations for which the product is safe and effective, as demonstrated through clinical studies. Further, a product may be marketed only in those dosage forms and for those indications approved in the NDA, ANDA, 510(K), or BLA. Certain changes to an approved BLA, including, with certain exceptions, any significant changes to labeling, require approval of a supplemental application before the drug may be marketed as changed. Any products that we manufacture or distribute pursuant to FDA approvals are subject to continuing monitoring and regulation by the FDA, including compliance with cGMP and the reporting of adverse experiences with the drugs. The nature of marketing claims that the FDA will permit us to make in the labeling and advertising of our products will generally be limited to those specified in FDA approved labeling, and the advertising of our products will be subject to comprehensive monitoring and regulation by the FDA. Drugs whose review was accelerated may carry additional restrictions on marketing activities, including the requirement that all promotional materials are pre-submitted to the FDA. Claims exceeding those contained in approved labeling will constitute a violation of the FDCA. Violations of the FDCA or regulatory requirements at any time during the product development process, approval process, or marketing and sale following approval may result in agency enforcement actions, including withdrawal of approval, recall, seizure of products, warning letters, injunctions, fines and/or civil or criminal penalties. Any agency enforcement action could have a material adverse effect on our business.

Pharmaceutical Coverage, Pricing and Reimbursement

Sales of any pharmaceutical product depend, in part, on the extent to which such product will be covered by third-party payors, such as federal, state, and foreign government healthcare programs, commercial insurance, and managed healthcare organizations, and the level of reimbursement for such product by third-party payors. Significant uncertainty exists as to the coverage and reimbursement status of any newly approved product. Decisions regarding the extent of coverage and amount of reimbursement to be provided are made on a plan-by-plan basis. One third-party payor's decision to cover a particular product does not ensure that other payors will also provide coverage for the product. As a result, the coverage determination process can require manufacturers to provide scientific details, information on cost-effectiveness, and clinical support for the use of a product to each payor separately. This can be a time-consuming process, with no assurance that coverage and adequate reimbursement will be applied consistently or obtained in the first instance.

In addition, third-party payors are increasingly reducing reimbursements for pharmaceutical products and related services. The U.S. government and state legislatures have continued implementing cost-containment programs, including price controls, restrictions on coverage and reimbursement and requirements for substitution of generic products. Third-party payors are increasingly challenging the prices charged, examining the medical necessity and reviewing the cost effectiveness of pharmaceutical products, in addition to questioning their safety and efficacy. Adoption of price controls and cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures, could further limit sales of any product. Decreases in third-party reimbursement for any product or a decision by a third-party payor not to cover a product could reduce physician usage and patient demand for the product.

At the state level, there are also new laws and ongoing ballot initiatives that create additional pressure on drug pricing and may affect how pharmaceutical products are covered and reimbursed. A number of states have adopted or are considering various pricing actions, such as those requiring pharmaceutical manufacturers to publicly report proprietary pricing information, limit price increases or to place a maximum price ceiling or cap on certain products. Existing and proposed state pricing laws have added complexity to the pricing of pharmaceutical drug products.

In international markets, reimbursement and healthcare payment systems vary significantly by country, and many countries have instituted price ceilings on specific products and therapies. For example, the European Union provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. Pharmaceutical products may face competition from lower-priced products in foreign countries that have placed price controls on pharmaceutical products and may also compete with imported foreign products. Furthermore, there is no assurance that a product will be considered medically reasonable and necessary for a specific indication, that it will be considered cost-effective by third-party payors, that an adequate level of reimbursement will be established even if coverage is available, or that the third-party payors' reimbursement policies will not adversely affect the ability for manufacturers to sell products profitably.

International Regulations

In addition to regulations in the United States, there are a variety of foreign regulations governing clinical trials and commercial sales and distribution of any product candidates. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval.

Failure to comply with applicable federal, state and foreign laws and regulations would likely have a material adverse effect on our business. In addition, federal, state and foreign laws and regulations regarding the manufacture and sale of new drugs are subject to future changes.

PHRMA Code and April 3, 2003 Department of Health and Human Services Office of Inspector General, OIG Compliance Program for Pharmaceutical Manufacturers

We have established and implemented a corporate compliance program designed to prevent, detect and correct violations of state and federal healthcare laws, including laws related to advertising and promotion of our products that are in compliance with the PHRMA Code and the OIG Compliance Program requirements for Pharmaceutical Manufacturers.

Healthcare Fraud, Waste and Abuse

We are subject to various federal, state and local laws targeting fraud and abuse in the healthcare industry, violations of which can lead to civil and criminal penalties, including fines, imprisonment and exclusion from participation in federal healthcare programs.

These laws are potentially applicable to us as both a manufacturer and a supplier of products reimbursed by federal healthcare programs, and they also apply to physicians and other potential purchasers of our products.

The federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b) prohibits persons from knowingly and willfully soliciting, receiving, offering or providing remuneration, directly or indirectly, to induce either the referral of an individual, or the furnishing, recommending or arranging for a good or service, for which payment may be made under a federal healthcare program such as the Medicare and Medicaid programs. Remuneration is not defined in the federal Anti-Kickback Statute and has been broadly interpreted to include anything of value, including for example, gifts, discounts, coupons, the furnishing of supplies or equipment, credit arrangements, payments of cash, waivers of payments, ownership interests and providing anything at less than its fair market value. Under the federal Anti-Kickback Statute and the applicable criminal healthcare fraud statutes contained within 42 U.S.C. § 1320a-7b, a person or entity need not have actual knowledge of this statute or specific intent to violate it in order to have committed a violation. In addition, the government may assert that a claim, including items or services resulting from a violation of 42 U.S.C. § 1320a-7b, constitutes a false or fraudulent claim for purposes of the civil False Claims Act (discussed below) or the civil monetary penalties statute, which imposes fines against any person who is determined to have presented or caused to be presented claims to a federal healthcare program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent. The federal Anti-Kickback Statute and implementing regulations provide for certain exceptions for "safe harbors" for certain discounting, rebating or personal services arrangements, among other things. However, the lack of

uniform court interpretation of the Anti-Kickback Statute, coupled with novel enforcement theories by government authorities, make compliance with the law difficult. Violations of the federal Anti-Kickback Statute can result in significant criminal fines, exclusion from participation in Medicare and Medicaid and follow-on civil litigation, among other things, for both entities and individuals.

In October 2019, the Office of the Inspector General of the Department of Health and Human Services issued a Proposed Rule: Revisions to Safe Harbors under the Anti-Kickback Statute and Civil Monetary Penalty Rules Regarding Beneficiary Inducements (October Proposed Rule) to, among other things, add new safe harbors for certain value-based arrangements. Although the value-based proposals would not include pharmaceutical manufacturers among the entities that could permissibly enter into such contracting arrangements, the general trend toward outcomes and value-based contracts in the healthcare industry may continue. It is possible that payors, among other customers, could push manufacturers for novel contracting approaches, including those that would incorporate value-based principles, and these efforts could affect our business.

The civil False Claims Act and similar state laws impose liability on any person or entity who, among other things, knowingly presents, or causes to be presented, a false or fraudulent claim for payment by a federal healthcare program. The qui tam provisions of the False Claims Act and similar state laws allow a private individual to bring civil actions on behalf of the federal or state government and to share in any monetary recovery. The Federal Physician Payments Sunshine Act and similar state laws impose reporting requirements for various types of payments to physicians and teaching hospitals. Failure to comply with reporting requirements under these laws could subject manufacturers and others to substantial civil money penalties.

Other Healthcare Laws and Compliance Requirements

In the United States, our activities are potentially subject to regulation by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare and Medicaid Services (formerly the Health Care Financing Administration), other divisions of the United States Department of Health and Human Services (e.g., the Office of Inspector General), the United States Department of Justice and individual United States Attorney offices within the Department of Justice, and state and local governments.

Drug Quality and Security Act ("DQSA")

DQSA was enacted by Congress on November 27, 2013. Title II of DQSA, the Drug Supply Chain Security Act ("DSCSA"), outlines steps to build an electronic, interoperable system to identify and trace certain prescription drugs as they are distributed in the United States. This is intended to enhance the FDA's ability to help protect consumers from exposure to drugs that may be counterfeit, stolen, contaminated, or otherwise harmful. The system is also intended to improve detection and removal of potentially dangerous drugs from the drug supply chain to protect U.S. consumers.

Additionally, the DSCSA directs FDA to establish national licensure standards for wholesale distributors and third-party logistics providers, and requires these entities report licensure and other information to FDA annually. The implementation and enforcement of complete unit level traceability of verifiable return serialization including aggregation throughout the whole supply chain is not required until November 27, 2023.

We are subject to, and required to be in compliance with, DQSA. Our Company remains in compliance with the requirements promogulated by the DSCSA and intends on remaining vigilant with regards to any potential modifications to the act. For purposes of our business, we are considered both manufacturers and re-packagers under the act. Currently, we are in compliance with the DSCSA as it relates to our business and operations.

DSCSA: Recent FDA Announcement Regarding Certain Wholesale Distributor and Dispenser Verification Requirements Under DSCSA.

On October 22, 2020, the FDA announced a final guidance regarding enforcement of the DSCSA requirements for wholesale distributor verification of saleable returned products and dispenser verification of the product identifier for suspect and illegitimate product.

- FDA does not intend to take action against wholesale distributors who do not, prior to November 27, 2023, verify a product identifier prior to further distributing returned product as required under the DSCSA. This provides wholesale distributors three additional years to comply with this requirement.
- FDA also does not intend to take action against dispensers who do not, prior to November 27, 2023, verify the product identifier for suspect or illegitimate product in the dispenser's possession or control. This provides dispensers three additional years to comply with this requirement.

Although the rule regarding wholesale distributor verification of saleable returned products does not directly apply to our Company, we will be required to assist our wholesale distributor customers by setting in place mechanics that would allow for traceability of returns in the supply chain. If we are not able to come into compliance of this rule, our wholesale distributor customers may not accept our returns on our behalf.

Properties

Our executive offices are located at 9237 E Via de Ventura Blvd. Suite 105, Scottsdale, AZ 85258. We believe that our existing facilities are adequate to meet our current requirements. We do not own any real property.

Legal Proceedings

On March 31, 2021 we executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc., a subsidiary of Eli Lilly and Company ("Dermira"), and the transaction closed on May 14, 2021. Pursuant to the terms of the agreement, we acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon closing of the Qbrexza purchase, we became substituted for Dermira as the plaintiff in, and are currently vigorously litigating, U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza (the "Qbrexza Patents"), which are included among the proprietary rights to Qbrexza to be acquired pursuant to the APA. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application, or ANDA. The ANDA seeks approval to market a generic version of Qbrexza prior to the expiration of the Qbrexza Patents and alleges that the Qbrexza Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof. See "*Risk Factors — Risks Related to Intellectual Property, Generic Competition and Paragraph IV Litigation*."

MANAGEMENT

Executive Officers, Key Management and Directors

Executive Officers

The following table sets forth certain information about our executive officers.

Name	Age	Position
Claude Maraoui	55	President, Chief Executive Officer and Director
Robyn M. Hunter	59	Interim Chief Financial Officer

The following is a biographical summary of the experience of our executive officers:

Claude Maraoui — President & Chief Executive Officer, Director

Claude Maraoui is our founder, President and Chief Executive Officer and is also a member of the board of directors. Mr. Maraoui has over 30 years of experience in launching and commercializing some of the most successful dermatology products in the world. Prior to founding Journey, Mr. Maraoui spent 21 years at Medicis Pharmaceutical Corporation (NYSE: MRX) in a variety of sales and marketing leadership roles in both the aesthetics and therapeutic dermatology divisions, ultimately serving as Vice President of Dermatology Sales, where he was responsible for over $1.2 billion in revenue. While at Medicis, he was part of the leadership team that successfully commercialized leading therapeutic products such as Solodyn, Dynacin, Loprox and Ziana. He was also a divisional head of marketing and sales for aesthetics products such as Dysport, Restylane, and Perlane. In 2012, Mr. Maraoui played a key role during the $2.6 billion acquisition of Medicis by Valeant Pharmaceuticals International Inc. (now Bausch Health), and served on the transition team that led to the post-merger formation of the largest dermatology company in the U.S.

As our founder, President, and Chief Executive Officer, Mr. Maraoui has guided the organization to a leading position in dermatology with a proven track record of commercial excellence in a highly competitive niche market. He was responsible for securing the initial capital investment and led us from launch, guiding its evolution into a profitable company with a 200% 3-year CAGR. Our growth under Mr. Maraoui's leadership was instrumental in driving Fortress Biotech's #10 ranking on Deloitte's 2019 Technology Fast 500. A significant amount of our success can be attributed to Mr. Maraoui's disciplined business development approach, identifying differentiated portfolio assets and continuously working on transformative pipeline, merger, and acquisition opportunities while focusing on the aggressive organic growth strategy of our existing product portfolio. Mr. Maraoui has been selected to serve on our Board of Directors based on his pharmaceutical and dermatology industry experience, as well as his extensive management experience.

Mr. Maraoui received his B.S. in Marketing from Rutgers University and is a member of the American Academy of Dermatology.

Robyn M. Hunter — Interim Chief Financial Officer

Robyn M. Hunter has served as our Interim Chief Financial Officer since July 2021. Ms. Hunter also currently serves as Fortress' Chief Financial Officer and corporate secretary. Ms. Hunter has more than 30 years of financial and operational experience in an array of industries. From June 2011 until her promotion to Chief Financial Officer, Ms. Hunter served as Fortress' Vice President and Corporate Controller. At Fortress, Ms. Hunter has implemented financial and operational processes, procedures, and policies to facilitate the execution of Fortress' growth strategy. From January 2006 to May 2011, Ms. Hunter served as Senior Vice President and Chief Financial Officer of Schochet Associates. From August 2004 to January 2006, Ms. Hunter served as the Corporate Controller for Indevus Pharmaceuticals. From 1990 to 2004, Ms. Hunter held several positions from Accounting Manager to Vice President and Treasurer of The Stackpole Corporation. Ms. Hunter holds a B.A. degree in Economics from Union College in Schenectady, New York.

Other Key Management

The following table sets forth certain information about our other key management.

Name	Age	Position
Robert Nevin	53	Chief Commercial Officer
Ramsey Alloush	36	General Counsel
Andrew Zwible	41	Vice President, Operations
Ernest Galvan	59	Vice President, Marketing and Strategy

The following is a biographical summary of the experience of our key management:

Robert Nevin — Chief Commercial Officer

Robert has more than 24 years of experience in pharmaceutical, lab and medical management, and oversees all sales, trade, and managed care functions at the Company. He joined us from The Dermatology Alliance, where he served as Managing Partner for one of the nation's largest independent physician associations in the specialty of dermatology. Robert received his B.S. in Business Administration and Finance from Seton Hall University.

Ramsey Alloush — General Counsel

Ramsey has more than 12 years of experience advising pharmaceutical and healthcare companies. Prior to joining the Company, he led a legal and advisory firm in Washington, D.C. focusing on corporate, commercial, regulatory, and securities matters and transactions. He also served as a legal fellow at the U.S. Securities & Exchange Commission, where he conducted enforcement and compliance activities. Before private practice, he worked on the commercial team in the aesthetics division at Medicis. Ramsey received his J.D. from Shepard Broad Law Center and LL.M. degrees in Taxation and Securities & Financial Regulation from Georgetown University Law Center.

Andrew Zwible — Vice President, Operations

Andrew has more than 12 years of experience in dermatology pharmaceuticals, working for Medicis and Valeant as a forecasting and analytics expert. At Medicis, he assisted with the $455 million acquisition of Graceway Pharmaceuticals LLC and the sell-side $2.6 billion acquisition of Medicis. He has previous experience in investment banking and financial analysis. Andrew received his B.S. in Biomedical/Medical Engineering from Johns Hopkins University, his M.S. in Health Care Administration/Management from Arizona State University and his M.B.A. in Finance from Arizona State University.

Ernest Galvan — Vice President, Marketing and Strategy

Ernest has more than 26 years of experience in the dermatology pharmaceutical industry. With more than 23 years in brand management and development, he has translated concepts into powerful marketing and brand solutions for a variety of dermatologic lines. Prior to the Company, his experience includes Bristol Myers Squibb, Medicis, Ranbaxy and Sun Dermatology. Ernest received his B.B.A. in Marketing from Stephen F. Austin State University and his M.B.A. in Marketing from La Salle University.

Directors

The following table sets forth certain information about our directors.

Name	Age	Position
Lindsay A. Rosenwald, M.D.	66	Executive Chairman of the Board
Claude Maraoui	55	President & Chief Executive Officer, Director
Neil Herskowitz	64	Director
Jeff Paley, M.D.	53	Director
Justin Smith	47	Director
Miranda Toledano	44	Director

The following is a biographical summary of the experience of our directors, other than Mr. Maraoui, whose summary is presented above:

Lindsay A. Rosenwald, M.D. — Executive Chairman of the Board of Directors

Dr. Rosenwald has served as a member of our board of directors since inception and the Executive Chairman of our board of directors since October 2014. Dr. Rosenwald has been a member of the board of directors of our parent company Fortress Biotech, Inc. since October 2009 and has served as Fortress' Chairman, President and Chief Executive Officer since December 2013. From November 2014 to August 2015, he served as interim President and Chief Executive Officer of Checkpoint Therapeutics, Inc. (Nasdaq: CKPT) and has served on Checkpoint's board of directors since inception. Dr. Rosenwald also currently serves as a member of the board of directors of Avenue Therapeutics, Inc. (Nasdaq: ATXI) and Mustang Bio, Inc. (Nasdaq: MBIO). From 1991 to 2008, Dr. Rosenwald served as the Chairman of Paramount BioCapital, Inc. Over the last 30 years, Dr. Rosenwald has acted as a biotechnology entrepreneur and has been involved in the founding and recapitalization of numerous public and private biotechnology and life sciences companies. These companies include:

- Cougar Biotechnology, Inc., a start-up founded by Dr. Rosenwald in 2006 that focused on the development of cancer therapeutics, including abiraterone acetate, an orally available targeted inhibitor of the steroidal enzyme known as 17-alpha hydroxylase/C17, 20 lyases for the treatment of prostate cancer. Johnson and Johnson acquired the company in 2009 for nearly $1 billion in cash (or $43 per share). The company was sold after a single phase 2 study. Abiraterone acetate has since been approved as Zytiga® and achieved billions of dollars in global sales;
- Keryx Biopharmaceuticals, Inc. (Nasdaq: KERX), founded in 1994 by Dr. Rosenwald. Keryx is focused on the development of treatments for renal disease, including Ferric Citrate, an oral, ferric iron-based compound with capacity to bind to phosphate in the gastrointestinal tract and form non-absorbable complexes. In September 2014, the FDA approved Ferric Citrate (to be marketed as "Zerenex"). Keryx successfully merged into Akebia Therapeutics (Nasdaq: AKBA) in December 2018; and
- TG Therapeutics, Inc. (Nasdaq: TGTX), co-founded by Dr. Rosenwald and Michael Weiss in 2012 and focused on the development of cancer therapeutics, and in particular treatments for hematological malignancies. Its therapies include Ublituximab, a chimeric glycoengineered monoclonal antibody that targets a unique epitope on the CD20 antigen found on the surface of B-lymphocytes developed to aid in the depletion of circulating B-cells; and Umbralisib, an orally available phosphoinositide-3-kinase delta inhibitor with nanomolar potency. As of January 2021, the company had a market cap in excess of $7.2 billion.

Dr. Rosenwald received his B.S. in finance from Pennsylvania State University and his M.D. from Temple University School of Medicine. Dr. Rosenwald has been selected to serve on the Company's board due to his extensive biotechnology, pharmaceutical and finance expertise, as well as his medical background and in-depth understanding of the Company's business.

Neil Herskowitz — Director

Since 1998, Mr. Herskowitz has served as the managing member of the ReGen Group of companies, located in New York, which includes ReGen Capital Investments LLC and Riverside Claims Investments LLC. Mr. Herskowitz has also served as President of Riverside Claims Investment's affiliate, Riverside Claims LLC, since June 2004. He also serves as Director and Chair of the Audit Committee of Checkpoint Therapeutics, Inc., and is a Director of Avenue Therapeutics, Inc. and Mustang Bio, Inc. In addition, Mr. Herskowitz serves as Chairman of the Board of Directors of Starting Point Services for Children, a not-for-profit corporation. Mr. Herskowitz received a B.B.A. in Finance from Bernard M. Baruch College in 1978. Mr. Herskowitz has been selected to serve on our Board of Directors based on his financial industry experience and his in-depth understanding of our business.

Jeff Paley, M.D. — Director

Dr. Jeffrey Paley has been an Active Clinician and Consultant in the healthcare industry for the past 25 years, during which time he has consulted for over 30 analysts and portfolio managers in the biotechnology,

pharmaceutical, specialty pharmaceutical and medical technology arenas, reviewing the clinical, preclinical and regulatory pedigrees of numerous therapeutics, devices and, in particular, dermatology products. Prior to his work for the buy-side, Dr. Paley consulted directly for several biotechnology and specialty pharmaceutical companies. Dr. Paley has served as a Director of seven public or private healthcare companies. Dr. Paley trained at Harvard Medical School and completed a residency in Internal Medicine at Massachusetts General Hospital. Dr. Paley has been selected to serve on our Board of Directors based on his experience with dermatology products, his experience in medicine in general and clinical trials and in serving as a director of other public companies.

Justin Smith — Director

Mr. Smith is a founding partner at Skinbetter Science, a leading global cosmetic technology development company, integrated with one of the world's fastest growing physician-dispensed skincare brands, where he currently serves as President. Prior to co-founding Skinbetter Science in 2013, Mr. Smith held the position of Senior Vice President, General Manager of the US Rx Dermatology Division of Bausch Health Companies (NYSE: BHC), where he led the sales and marketing efforts for the largest division of the company through July 2013. Mr. Smith joined BHC through the acquisition of Medicis Pharmaceutical Corp. (NYSE: MRX) in 2012. While at Medicis, from 1998 to 2012, he held numerous progressive positions in sales and marketing leadership, serving as Senior Vice President, Marketing and a member of the Chairman's Committee at the time of the acquisition of the company. Mr. Smith serves as a member of the board of directors of DermaForce Partners, the parent company of Skinbetter Science. Mr. Smith earned his B.B.A. in marketing from James Madison University. Mr. Smith has been selected to serve on our Board of Directors based on his dermatology industry experience, his in-depth understanding of our business, and his extensive management experience.

Miranda Toledano — Director

Ms. Toledano has over 20 years of biotech related principal investment, Wall Street/ capital market, and strategic experience. Since its inception in 2018, Ms. Toledano has served as Chief Operating Officer, Chief Financial Officer & Director of TRIGR Therapeutics, an oncology focused, clinical stage bispecific antibody company (acquired by Compass Therapeutics (CMPX) in May 2021). Previously, Ms. Toledano served on the executive management team of Sorrento Therapeutics (Nasdaq: SRNE) as EVP Corporate Development, where she helped drive the Company's hematology/oncology (IO mAbs, ADC), cellular therapy (CD-38 CAR-T, oncolytic virus), and pain franchises. From 2012 to 2016, Ms. Toledano served as Head of Healthcare Investment Banking at MLV & Co. (acquired by B. Riley FBR & Co.), where she completed biotech equity financings, including IPOs and follow-on offerings, totaling over $4 billion in aggregate value. Prior to joining MLV, from 2004 until 2010, Ms. Toledano served as a VP in the investment group of Royalty Pharma (Nasdaq: RPRX), where she focused on oncology/hematology and auto-immune monoclonal antibody investments. Ms. Toledano also serves as Director, Chair of the Audit Committee, and Member of the Compensation Committee of Entera Bio and as Director and Member of the Executive Committee of the Board of Directors of Lipomedix Pharmaceuticals Ltd. From 1998 to 2003, Ms. Toledano led the Life Sciences Corporate Finance group at Ernst & Young (Israel). Ms. Toledano holds a BA in Economics from Tufts University and an MBA in Finance and Entrepreneurship from the NYU Stern School of Business. Ms. Toledano has been selected to serve on our Board of Directors based on her financial and healthcare industry experience, as well as her in-depth understanding of our business.

Election of Officers and Family Relationships

Our executive officers are appointed by, and serve at the discretion of, our board of directors. There are no family relationships among any of our directors or executive officers.

Board of Directors

Composition of our Board of Directors

Our bylaws provide that our Board of Directors must consist of between one and nine directors, and such number of directors within this range may be determined from time to time by resolution of our Board of Directors or our stockholders. Currently, we have six directors.

Our bylaws also provide that our directors may be removed with or without cause by the affirmative vote of the holders of at least a majority of the votes that all our stockholders would be entitled to cast in an annual election of directors.

Our current and future executive officers and significant employees serve at the discretion of our Board of Directors. Our Board of Directors may also choose to form certain committees, such as a compensation and an audit committee.

Director Compensation

All of our non-employee directors receive compensation in the form of cash and equity in accordance with the Journey Medical Corporation Non-Employee Director Compensation Plan. Our President and Chief Executive Officer, also a co-founder of the Company, serves as a member of the Board of Directors and does not receive any compensation for his role in serving on our board.

Director Independence

Our Board of Directors has determined that, upon closing of this offering, Neil Herskowitz, Jeff Paley Justin Smith, Miranda Toledano will be independent directors. In making this determination, our board of directors applied the standards set forth in the rules of Nasdaq and in Rule 10A-3 under the Exchange Act. Our Board of Directors considered all relevant facts and circumstances known to it in evaluating the independence of these directors, including their current and historical employment, any compensation we have given to them, any transactions we have with them, their beneficial ownership of our capital stock, their ability to exert control over us, all other material relationships they have had with us and the same facts with respect to their immediate families.

Although there is no specific policy regarding diversity in identifying director nominees, the board of directors seek the talents and backgrounds that would be most helpful to us in selecting director nominees. In particular, our board of directors considers candidates for nomination, and may consider whether a director candidate, if elected, assists in achieving a mix of board of directors members that represents a diversity of background and experience.

Board Leadership Structure

Under our Corporate Governance Guidelines, of directors has the flexibility to decide whether the roles of Chief Executive Officer and Chair of the Board should be separated or combined. The board of directors has determined that it is currently in the best interest of the Company and our stockholders for the roles of Chief Executive Officer and Chair of the Board to be separated in recognition of the differences between these two roles and to permit the individual serving in each role to focus on different aspects of our business.

For example, our Chief Executive Officer is responsible for setting our strategic direction and managing our day-to-day leadership, operations and performance, while the Chair of the Board focuses on organizing board activities and maintaining effective working relationships with senior management and among members of the board of directors to enable the board to provide guidance to and oversight (including risk oversight) and accountability of management, provide the Chief Executive Officer ongoing direction regarding Board needs, interests and opinions, and ensure Board agendas are appropriately directed toward the Company's most significant matters. Dr. Lindsay Rosenwald has served as Chair of the Board since October 2014, and Mr. Claude Maraoui has served as our Chief Executive Officer since 2014. Mr. Maraoui also serves as a member of our board of directors.

Our board of directors periodically reviews the board's leadership structure to determine whether it continues to best serve the Company and its stockholders. As a result, the board of directors may determine in the future that these interests are best served by selecting one person to occupy both the Chief Executive Officer and Chair of the board roles.

Board Oversight of Risk

Risk assessment and oversight are an integral part of our governance and management processes. Our board of directors encourages management to promote a culture that incorporates risk management into

our corporate strategy and day-to-day business operations. Management discusses strategic and operational risks at regular management meetings and conducts specific strategic planning and review sessions during the year that include a focused discussion and analysis of the risks facing us. Throughout the year, senior management reviews these risks with the board of directors at regular board meetings as part of management presentations that focus on particular business functions, operations or strategies, and presents the steps taken by management to mitigate or eliminate such risks.

Our board of directors will not have a standing risk management committee, but will rather administer this oversight function directly through our board of directors as a whole, as well as through various standing committees of our board of directors that address risks inherent in their respective areas of oversight. In particular, our board of directors is responsible for monitoring and assessing strategic risk exposure. Our audit committee will coordinate the board of director's oversight of our internal control over financial reporting, disclosure controls and procedures, related-party transactions and code of conduct and corporate governance guidelines. Our compensation committee will assess and monitor whether any of our compensation policies and programs has the potential to encourage excessive risk-taking as well as succession planning as it relates to our Chief Executive Officer. While each committee will be responsible for evaluating certain risks and overseeing the management of such risks, our entire board of directors will be regularly informed through committee reports about such risks.

Board Committees

Our board of directors has established an audit committee and a compensation committee, each of which will operate pursuant to a charter to be adopted by our board of directors and will be effective upon the closing of this offering. Our board of directors may also establish other committees from time to time to assist the management of our business. The composition and functions of each committee are described below. Members serve on these committees until their resignation or until otherwise determined by our board of directors. Each committee has adopted a written charter that satisfies the applicable rules and regulations of the Sarbanes-Oxley Act, the SEC and Nasdaq Listing Rules, which we will post on our website at www.jmcderm.com upon the completion of this offering

Audit Committee

Our audit committee consists of Neil Herskowitz, Justin Smith and Miranda Toledano with Neil Herskowitz serving as chair. Our board of directors has determined that each member of the audit committee has sufficient knowledge in financial and auditing matters to serve on the Audit Committee. Our board of directors has determined that Neil Herskowitz qualifies as an "audit committee financial expert," as defined under the applicable rules of the SEC. We believe that the composition and functioning of our audit committee complies with all applicable requirements of the Sarbanes-Oxley Act, and all applicable SEC and Nasdaq rules and regulations. In making this determination, our board has considered prior experience, business acumen and independence. The audit committee's responsibilities include:

- evaluating the performance, independence and qualifications of our independent auditors and determining whether to retain our existing independent auditors or engage new independent auditors;
- reviewing and approving the engagement of our independent auditors to perform audit services and any permissible non-audit services;
- monitoring the rotation of partners of our independent auditors on our engagement team as required by law;
- prior to engagement of any independent auditor, and at least annually thereafter, reviewing relationships that may reasonably be thought to bear on their independence, and assessing and otherwise taking the appropriate action to oversee the independence of our independent auditor;
- reviewing our annual and quarterly financial statements and reports, including the disclosures contained under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations," and discussing the statements and reports with our independent auditors and management;

- reviewing, with our independent auditors and management, significant issues that arise regarding accounting principles and financial statement presentation and matters concerning the scope, adequacy and effectiveness of our financial controls;
- reviewing with management and our independent auditors any earnings announcements and other public announcements regarding material developments;
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding financial controls, accounting or auditing matters and other matters;
- preparing the report that the SEC requires in our annual proxy statement;
- reviewing and providing oversight of any related-person transactions in accordance with our related-person transaction policy and reviewing and monitoring compliance with legal and regulatory responsibilities, including our code of business conduct and ethics;
- reviewing our major financial risk exposures, including the guidelines and policies to govern the process by which risk assessment and risk management are implemented;
- reviewing on a periodic basis our investment policy; and
- reviewing and evaluating on an annual basis the performance of the audit committee and the audit committee charter.

Compensation Committee

Our compensation committee consists of Justin Smith, Neil Herskowitz and Jeff Paley, with Justin Smith serving as chair. Our board of directors has determined that each of the members of our compensation committee is a non-employee director, as defined in Rule 16b-3 promulgated under the Exchange Act, and satisfies the Nasdaq independence requirements. The functions of this committee include, among other things:

- reviewing and approving our philosophy, policies and plans with respect to the compensation of our chief executive officer;
- making recommendations to our board of directors with respect to the compensation of our chief executive officer and our other executive officers;
- reviewing and assessing the independence of compensation advisors;
- overseeing and administering our equity incentive plans;
- reviewing and making recommendations to our board of directors with respect to director compensation; and
- preparing the Compensation Committee reports required by the SEC, including our "Compensation Discussion and Analysis" disclosure.

We believe that the composition and functioning of our compensation committee complies with all applicable requirements of the Sarbanes-Oxley Act, and all applicable SEC and Nasdaq rules and regulations. We intend to comply with future requirements to the extent they become applicable to us.

Nominating and Corporate Governance Matters

Our board of directors does not currently have a nominating and corporate governance committee or other committee performing a similar function, nor do we have any formal written policies outlining the factors and process relating to the selection of nominees for consideration for membership on our board of directors by our directors or our stockholders. Our board of directors has adopted resolutions in accordance with the rules of The Nasdaq Stock Market authorizing a majority of our independent members to recommend qualified director nominees for consideration by the board of directors. Our board of directors believes that it is appropriate for us to not have a standing nominating and corporate governance committee because of a number of factors, including the number of independent members who want to participate in consideration of candidates for membership on our board of directors and in matters that relate to the corporate governance of our company. Upon completion of this offering, our board of directors

will consist of six members, four of whom will be independent. Our board of directors considered forming a nominating and corporate governance committee consisting of several of the independent members of our board of directors. Forming a committee consisting of less than all of the independent members was unattractive because it would have omitted the other independent members of our board of directors who wanted to participate in considering qualified candidates for board membership and to have input on corporate governance matters related to our company. Since our board of directors desired the participation in the nominations process of all of its independent directors, it therefore decided not to form a nominating and corporate governance committee and instead authorized a majority of the independent members of our board of directors to make and consider nominations for membership to our board of directors. The independent members of our board of directors do not have a nominating and corporate governance committee charter, but act pursuant to board of director resolutions as described above. Each of the members of our board of directors authorized to recommend director nominees is independent within the meaning of the current "independent director" standards established by The Nasdaq Stock Market rules. Our board of directors intends to review this matter periodically, and may in the future elect to designate a formal nominating and corporate governance committee.

Compensation Committee Interlocks and Insider Participation

None of our current or former executive officers serve as a member of the compensation committee. None of our officers serve, or have served during the last completed fiscal year, on the board of directors or compensation committee, or other committee serving an equivalent function, of any other entity that has one or more of its executive officers serving as a member of our board of directors or our compensation committee. For a description of transactions between us and members of our compensation committee and affiliates of such members, please see "Certain Relationships and Related-Party Transactions."

Code of Business Conduct and Ethics

We have adopted a written code of business conduct, that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. Upon the closing of this offering, a copy of the code will be posted on the Investor Relations section of our website at www.jmcderm.com.

EXECUTIVE COMPENSATION

This section discusses the material components of the executive compensation program for our executive officers who are named in the "Summary Compensation Table" below. In 2020, our "named executive officers" and their positions were as follows:

- Claude Maraoui, our founder and Chief Executive Officer
- Nirav Jhaveri, our former Chief Financial Officer

Summary Compensation Table

The following table sets forth information concerning the compensation of our named executive officers for the year ended December 31, 2020.

Name and principal position	Year	Salary ($)	Bonus ($)	Stock Awards[1] ($)	All Other ($)	($)
Claude Maraoui.						
Chief Executive Officer	2020	$450,000	$450,000	$1,193,061	$ 827	$2,093,888
Nirav Jhaveri[2]						
Chief Financial Officer	2020	281,194	—	219,050	—	500,924

(1) In accordance with SEC rules, these columns reflect the aggregate grant date fair value of the equity awards granted during 2020. This amount has been computed in accordance with Financial Accounting Standards Board (FASB), Accounting Standards Codification (ASC) Topic 718. As required by SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. Assumptions used in the calculation of this amount are described in Note 2 to our financial statements included elsewhere in this prospectus. In September 2020, Mr. Maraoui received a 354,024 Restricted Stock Unit grant, which is eligible to vest immediately and automatically vests upon a change of control occurring prior to or on the fifth anniversary of the date of the grant and Mr. Jhaveri received a 65,000 Restricted Stock Unit grant, which vests upon a change of control occurring prior to or on the fifth anniversary of the date of grant. The grants were valued at $3.37 per share utilizing a 409A valuation received by the Company.

(2) Mr. Jhaveri was our Chief Financial Officer as of December 31, 2020 but left the Company on April 8, 2021.

Narrative to the Summary Compensation Table

Annual Base Salary

The compensation of our named executive officers is generally determined and approved by our board of directors. The 2020 base salaries of each of our named executive officers are described below under the subsection titled "— Employment Arrangements with our Named Executive Officers."

Performance Bonus Opportunity / Bonus and Non-Equity Incentive Compensation Opportunity

In addition to base salaries, our named executive officers are eligible to receive annual performance-based cash bonuses, which are designed to provide appropriate incentives to our executives to achieve defined annual corporate goals and to reward our executives for individual achievement towards these goals. The annual performance-based bonus each named executive officer is eligible to receive is generally based on the extent to which we achieve the corporate goals that our board of directors establishes each year. At the end of the year, our board of directors reviews our performance against each corporate goal and determines the extent to which we achieved each of our corporate goals.

Our board of directors will generally consider each named executive officer's individual contributions towards reaching our annual corporate goals.

The corporate goals the board of directors established for 2020 related to product commercialization milestones, business development objectives, and financing objectives.

Employee Benefit and Incentive Plans

We do not maintain any deferred compensation, retirement, pension or profit-sharing plans. Our board of directors has adopted an incentive plan, the material terms of which are described below, allowing for the grant of equity and cash-based awards to our employees and directors.

Equity Incentive Plan

2015 Incentive Plan

On May 27, 2015 (the "Effective Date"), our Board of Directors adopted the Journey Medical Corporation 2015 Stock Plan (the "2015 Plan"), which will continue in effect for ten years from the Effective Date. The material terms of the 2015 Plan are described below. The 2015 Plan will be administered by a Committee, as further described below. The Committee has not yet been formed, but it will be formed before any necessary actions to be taken by the Committee with respect to the 2015 Plan are taken.

Purpose. The purpose of the 2015 Plan is to provide incentives to the Company's employees, directors, and consultants by providing them with the opportunity to purchase common stock pursuant to incentive stock options, to receive bonus awards of the Company's common stock, and to make direct purchases of our common stock.

Permissible Awards. The 2015 Plan authorizes awards in any of the following forms:

- Options to purchase shares of the Company's common stock, which may consist of nonstatutory stock options or incentive stock options under the Internal Revenue Code (respectively, "NSOs" and "ISOs" and together "Options"). The exercise price of an ISO granted under the 2015 Plan may not be less than the fair market value of our common stock on the date of grant. Options granted under the 2015 Plan may not have a term longer than ten years in the case of NSOs and ISOs generally. ISOs granted to an employee owning stock representing more than 10% of the combined voting power of all classes of the Company's stock may not have a term longer than five years from the grant date.
- Bonus awards of our common stock ("Stock Bonuses").
- Opportunities to make direct purchases of our common stock ("Purchase Rights" and collectively with NSOs, ISOs, and Stock Bonuses, the "Stock Rights").

Stock Rights will be evidenced by instruments in forms designated by the Committee, which will include such provisions designated in the 2015 Plan and other provisions as the Committee may specify.

Eligible Employees. ISOs may only be granted to Company employees. NSOs, Stock Bonuses, and Purchase Rights may be granted to any of the Company's directors, employees, or consultants. No employee may be granted Stock Rights covering more than 80% of the total shares of our common stock authorize for issuance under the Plan.

Stock Available for Awards. Subject to adjustment as provided in the 2015 Plan, the aggregate number of shares of our common stock reserved and available for issuance pursuant to awards granted under the 2015 Plan is 3,000,000. If any Option granted under the Plan expires or terminates without having been exercised in full, or the Company reacquires any shares issued pursuant to a Stock Right, the unpurchased shares subject to such option will again be available for grants of Stock Rights under the 2015 Plan. Shares of our common stock withheld to pay the exercise price of an Option or any related withholding obligations will not be available for reissuance under the 2015 Plan.

Minimum Price; ISO Limitations. The Committee shall designate the price per share of any NSO, Stock Bonus, or Purchase Right. The price per share for each ISO shall not be less than the fair market value per share of our common stock on the grant date. If an ISO is to be granted to an employee owning more than 10% of the total combined voting power of all classes of the Company's stock, the price per share

shall not be less than 110% of the fair market value per share of our common stock on the grant date. If the aggregate fair market value of the common stock exceeds $100,000, or such higher value as may be established under Code Section 422, the ISO will be treated as an NSO.

Administration. The 2015 Plan will be administered by the Company's Board or a committee consisting of directors or other persons that the Board may appoint (the "Committee"). The Committee will have the authority: (i) to determine when and to whom to grant ISOs (from the pool of designated employees eligible to receive ISOs), NSOs, and Stock Bonuses; (ii) to determine the number of shares of common stock subject to any Stock Right; (iii) to determine the option price of shares subject to each Option, the purchase price of shares subject to each Purchase Right, and the form of consideration to be paid to the Company for exercise of such Option or purchase with respect to a Purchase Right; (iv) to determine whether each Option granted shall be an ISO or NSO; (v) to determine when each Option shall become exercisable and the duration of the exercise period; (vi) to set restrictions, such as repurchase options, on shares subject to Options, Stock Bonuses, and Purchase Rights; (vii) to approve forms of agreement for use under the Plan; (viii) to determine the Fair Market Value of a Stock Right or the common stock underlying a Stock Right; (ix) to accelerate vesting on any Stock Right or waive any forfeiture restriction, limitation, or restriction thereon; (x) to reduce the exercise price of any Stock Right if the Fair Market Value of the common stock covered by such Stock Right has declined since the grant date; (xi) to institute a program whereby outstanding Options can be surrendered in exchange for Options with a lower exercise price; (xii) to modify or amend each Stock Right, including the discretionary authority to extend the post-termination exercisability period of Stock Rights longer than is otherwise provided for by the Plan or the Stock Right; (xiii) to construe and interpret the Plan and Stock Rights grants thereunder; (xiv) to prescribe and rescind rules related to the Plan; and (iv) to make any other necessary or advisable determinations for Plan administration. In the event that a Reporting Person (as defined in Rule 16b-3) receives a Stock Right, the Committee shall determine the timing, exercise price, and/or the number of shares subject to the Stock Right.

Limitations on Transfer; Beneficiaries. No award will be assignable or transferable by a participant other than, with the Board or Designated Committee's approval, to the grantee's spouse, parents, children, grandparents, grandchildren, and any trusts created for the benefit of such individuals, or by will or the laws of descent and distribution. Unless expressly approved by the Committee, no ISO shall be assignable or transferable except by will or by the laws of descent and distribution.

Adjustment for Stock Splits and Combinations. If the Company effects a subdivision of the outstanding common stock, the conversion ratio in effect immediately prior to that subdivision shall be proportionately decreased. If the Company effects a combination of the outstanding common stock, the conversion ratio immediately prior to that combination shall be proportionately increased.

Adjustment for Merger or Reorganization. Upon the occurrence of any reorganization, recapitalization, reclassification, consolidation, or merger in which the common stock (but not the Class A Common Stock) is converted into or exchanged for securities, cash, or other property, then each share of Class A Common Stock shall be convertible in lieu of the common stock into which it was convertible prior to such event into the kind and amount of securities, cash, or other property which a holder of the number of shares of common stock of the Company issuable upon conversion of one share of the applicable Class A Common Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation, or merger would have been entitled to receive pursuant to such transaction.

Outstanding Equity Awards as of December 31, 2020

The following table sets forth certain information about outstanding equity awards granted to our named executive officers that remain outstanding as of December 31, 2020.

	Option Awards[1]					Stock Awards[2]	
Name	Grant Date	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Unexercisable	Option Exercise Price[3]	Option Expiration Date	Number of Shares of Stock that Have Not Vested	Market Value of Shares that Have Not Vested
Claude Maraoui	10/19/2015	1,250,000	—	$ 0.065	10/19/2025	—	—

	Option Awards[1]					Stock Awards[2]	
Name	Grant Date	Number of Securities Underlying Unexercised Options Exercisable	Number of Securities Underlying Unexercised Options Unexercisable	Option Exercise Price[3]	Option Expiration Date	Number of Shares of Stock that Have Not Vested	Market Value of Shares that Have Not Vested
	09/24/2020	—	—	—	—	354,024	$1,196,061
Nirav Jhaveri	06/17/2019	13,333	6,667	$ 1.390			
	09/24/2020	—	—	—	—	65,000	$ 219,050

(1) All of the option awards were granted under the 2015 Plan, the terms of which plan is described below under "— Equity Incentive Plans — 2015 Equity Incentive Plan."

(2) All of the stock awards were granted outside of the 2015 Plan.

(3) All of the option awards were granted with a per share exercise price equal to the fair market value of one share of our common stock on the date of grant, as determined in by our board of directors.

Certain U.S. Federal Income Tax Effects

The following discussion is limited to a summary of the U.S. federal income tax provisions relating to the grant, exercise, vesting and settlement of awards under the Journey Medical 2015 Stock Plan (the "Plan") and the subsequent sale of common stock acquired under the Plan. The tax consequences of awards may vary depending upon the particular circumstances, and it should be noted that the income tax laws, regulations and interpretations thereof change frequently. This discussion is intended for general information only and does not purport to be a complete analysis of all of the potential tax effects of the Plan. Additional taxes, including state, local, and foreign taxes, may apply and may vary from jurisdiction to jurisdiction.

Non-Qualified Stock Options. There typically will be no U.S. federal income tax consequences to the optionee or to us upon the grant of a non-qualified stock option under the Plan. When the optionee exercises a non-qualified option, however, he or she will recognize ordinary income in an amount equal to the excess of the fair market value of our common stock received upon exercise of the option at the time of exercise over the exercise price, and we will typically be allowed a corresponding U.S. federal income tax deduction. Any gain that the optionee realizes when he or she later sells or disposes of the option shares will be short-term or long-term capital gain, depending on how long the shares were held.

Incentive Stock Options. There typically will be no U.S. federal income tax consequences to the optionee or to us upon the grant or exercise of an incentive stock option. If the optionee holds the acquired option shares for the required holding period of at least two years after the date the option was granted and one year after exercise, the difference between the exercise price and the amount realized upon sale or disposition of the option shares will be long-term capital gain or loss, and we will not be entitled to a U.S. federal income tax deduction on such amount. If the optionee disposes of the option shares in a sale, exchange, or other disqualifying disposition before the required holding period ends, he or she will recognize taxable ordinary income in an amount equal to the excess of the fair market value of the option shares at the time of exercise (or, if less, the amount realized on the disposition of the shares) over the exercise price, and we would typically be allowed a U.S. federal income tax deduction equal to such amount. While the exercise of an incentive stock option does not result in current taxable income, the excess of the fair market value of the option shares at the time of exercise over the exercise price will be an item of adjustment for purposes of determining the optionee's alternative minimum taxable income.

Stock Appreciation Rights. A participant receiving a stock appreciation right typically will not recognize income, and we will not be allowed a tax deduction, at the time the award is granted. When the participant exercises the stock appreciation right, the amount of cash and the fair market value of any shares of our common stock received will be ordinary income to the participant and we will typically be allowed a corresponding U.S. federal income tax deduction at that time.

Restricted Stock. Unless a participant makes an election to accelerate recognition of income to the date of grant as described below, the participant will not recognize income, and we will not be allowed a tax

deduction, at the time a restricted stock award is granted, provided that the award is nontransferable and is subject to a substantial risk of forfeiture. When the restrictions lapse, the participant will recognize ordinary income equal to the fair market value of our common stock as of that date (less any amount he or she paid for the stock), and we will typically be allowed a corresponding U.S. federal income tax deduction at that time, subject to limitations in certain circumstances. If the participant files an election under Code Section 83(b) within 30 days after the date of grant of the restricted stock, he or she will recognize ordinary income as of the date of grant equal to the fair market value of the stock as of that date (less any amount paid for the stock), and we will typically be allowed a corresponding U.S. federal income tax deduction, subject to limitations in certain circumstances at that time. Any future appreciation in the stock will be taxable to the participant at capital gains rates. However, if the stock is later forfeited, the participant will not be able to recover the tax previously paid pursuant to the Section 83(b) election.

Restricted Stock Units. A participant typically will not recognize income, and we will not be allowed a tax deduction, at the time a restricted stock unit award is granted. When the participant receives shares of our common stock (or the equivalent value in cash or other property) in settlement of a restricted stock unit award, a participant will recognize ordinary income equal to the fair market value of our common stock or other property as of that date (less any amount he or she paid for the stock or property), and we will typically be allowed a corresponding U.S. federal income tax deduction at that time, subject to limitations in certain circumstances.

Cash-Based Performance Awards. A participant will not recognize income, and we will not be allowed a tax deduction, at the time a cash-based performance award is granted (for example, when the performance goals are established). Upon receipt of cash in settlement of the award, the participant will recognize ordinary income equal to the cash received, and we will typically be allowed a corresponding U.S. federal income tax deduction at that time, subject to limitations in certain circumstances.

Section 409A. The Plan permits the grant of various types of incentive awards, which may or may not be exempt from Code Section 409A. If an award is subject to Section 409A, and if the requirements of Section 409A are not met, the taxable events as described above could apply earlier than described, and could result in the imposition of additional taxes and penalties. Restricted stock awards, and stock options and SARs that comply with the terms of the Plan, are generally exempt from the application of Section 409A. Stock units, other stock-based awards and cash-based awards that are granted in one year and payable in a later year generally are subject to Section 409A unless they are designed to satisfy the short-term deferral exemption from such law. If not exempt, such awards must be specially designed to meet the requirements of Section 409A in order to avoid early taxation and penalties.

Tax Withholding. We have the right to deduct or withhold, or require a participant to remit to us, an amount sufficient to satisfy federal, state and local taxes (including employment taxes) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan.

Employment Arrangements with our Named Executive Officers

This section contains a description of the material terms of the employment agreements with our named executive officers. The employment of each of our named executive officers is at will. Please see below for a discussion of the severance pay and other benefits to be provided in connection with a termination of employment under the arrangements with our named executive officers.

Employment Agreement with Claude Maraoui

On September 22, 2014, the Company entered into an employment agreement with Mr. Maraoui (the "Employment Agreement"), pursuant to which he receives a base salary at the annualized rate of $300,000 (the "Base Salary"). The Employment Agreement further provides for an additional cash bonus (the "Annual Milestone Bonus") linked to the attainment of certain financial, clinical development, and/or business milestones (the "Milestones") to be established annually by the Board of Directors or the Compensation Committee. The achievement of these Milestones may result in an Annual Milestone Bonus of up to one hundred percent (100%) of Mr. Maraoui's annual salary. Additionally, the Employment Agreement entitles Mr. Maraoui to receive, upon the closing of a "corporate development transaction" (as defined in the

Employment Agreement), shares of the Company's common stock representing fifteen percent (15%) of the total outstanding shares of common stock as of the closing date (the "Shares"), half of which vest in three equal installments on the first, second, and third anniversaries of the grant, and the remaining half of which vest upon the Company's achievement of certain sales and performance goals, to be described in a separate agreement to be entered into at the time of the grant.

In accordance with the section above, as satisfaction of the closing of the Company's first corporate development transaction in July 2015, Mr. Maraoui received an equity grant of 1,500,000 restricted shares of the Company. In October 2015, this grant was modified, and the Company repurchased the unvested shares of 1,250,000 and granted Mr. Maraoui with an option to purchase the Company's common stock for 1,250,000. As of December 31, 2021 this option was fully vested.

The Employment Agreement provides Mr. Maraoui with severance benefits upon certain terminations of employment, as described below. In each case, the severance benefits are conditioned upon Mr. Maraoui's execution and non-revocation of a release of claims against the Company.

Termination Without Cause; Resignation for Good Reason. If the Company terminates Mr. Maraoui's employment without "cause" or Mr. Maraoui resigns for "good reason" (as such terms are defined in the Employment Agreement) he will receive: (i) his Base Salary for a period of twelve (12) months beginning on the sixtieth (60^{th}) day following the termination of his employment with the Company; (ii) a pro-rata share of the Annual Milestone Bonus for the year in which the termination occurred, to be paid when and if such Annual Milestone Bonus would have been paid under the Employment Agreement; and (iii) if timely elected, the premiums necessary to continue health insurance coverage under COBRA until the conclusion of time when Mr. Maraoui is receiving Base Salary payments or until Mr. Maraoui becomes eligible for group health insurance coverage under another employer's plan, whichever occurs first.

Termination due to Death or Complete Disability. If Mr. Maraoui's employment terminates as a result of his death or "complete disability" (as defined in the Employment Agreement), then he (or his estate, if applicable) will receive: (i) his Base Salary (at the rate in effect as of the termination) for a period of ninety (90) days beginning on the sixtieth (60^{th}) day following the termination of his employment with the Company, and (ii) a pro-rata share of the Annual Milestone Bonus for the year in which the termination occurred, to be paid when and if such Annual Milestone Bonus would have been paid under the Employment Agreement.

PRINCIPAL STOCKHOLDERS

The following table sets forth information with respect to the beneficial ownership of our common stock as of June 30, 2021, and as adjusted to reflect the sale of our common stock offered by us in this offering, for:

- each of our named executive officers;
- each of our directors;
- all of our current directors and executive officers as a group; and
- each person, or group of affiliated persons, known by us to be the beneficial owner of more than 5% of our outstanding shares common stock.

We have determined beneficial ownership in accordance with the rules of the SEC, which generally means that a person has beneficial ownership of a security if he or she possesses sole or shared voting or investment power of that security, including options that are currently exercisable or exercisable within 60 days of June 30, 2021. Unless otherwise indicated, to our knowledge, the persons and entities named in the table below have sole voting and sole investment power with respect to all shares that they beneficially own, subject to community property laws where applicable. The information in the table below does not necessarily indicate beneficial ownership for any other purpose, including for purposes of Sections 13(d) and 13(g) of the Securities Act.

We have based our calculation of the percentage of beneficial ownership prior to this offering on shares of common stock outstanding as of June 30, 2021. We have based our calculation of the percentage of beneficial ownership after this offering on shares of common stock outstanding immediately after the closing of this offering. In computing the number of shares beneficially owned by an individual or entity and the percentage ownership of that person, shares of common stock subject to options, convertible securities or other rights, held by such person that are currently exercisable or will become exercisable within 60 days of June 30, 2021, are considered outstanding. We did not, however, deem such shares outstanding for the purpose of computing the percentage ownership of any other person.

Unless otherwise indicated, the address of each beneficial owner listed in the table below is c/o Journey Medical Corporation, 9237 E Via de Ventura Blvd. Suite 105, Scottsdale, AZ 85258.

Name of Beneficial Owner	Number of Shares Beneficially Owned Prior to Offering	Percentage of Shares Beneficially Owned	
		Prior to this Offering	After this Offering
5% and Greater Stockholders:			
Fortress Biotech, Inc.[1]	8,500,000		
Named Executive Officers and Directors:			
Lindsay A. Rosenwald, M.D.[2]	500,000		
Claude Maraoui[3]	1,450,000		
Neil Herskowitz			
Jeff Paley M.D.			
Justin Smith			
Miranda Toledano			
All executive officers and directors as a group	1,950,000		

* Represents beneficial ownership of less than 1%.

(1) Includes 6,000,000 Class A common shares.

(2) Dr. Rosenwald is 500,000 warrants, that are fully vested, and are granted from Fortress Biotech, Inc.'s holdings.

(3) Excludes 354,024 unvested Restricted Stock Units granted to Mr. Maraoui in September 2020.

CERTAIN RELATIONSHIPS AND RELATED-PARTY TRANSACTIONS

The following is a summary of each transaction or series of similar transactions since our inception to which it was or is a party and includes such transactions that:

- the amount involved exceeded or exceeds $120,000; and
- any of our directors or executive officers, any holder of 5% of our capital stock or any member of their immediate family had or will have a direct or indirect material interest.

Fortress Ownership of Our Class A Common Stock

Pursuant to the terms of the Class A Common Stock, of which all outstanding shares are currently held by Fortress, Fortress will be entitled to cast, for each share of Class A Common Stock held by Fortress, the number of votes that is equal to 1.1 times a fraction, the numerator of which is the number of shares of outstanding common stock and the denominator of which is the number of shares of outstanding Class A Common Stock (the "Class A Common Stock Ratio"). Thus, Fortress will at all times have voting control of the Company. Further, for a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock, the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of the Company.

Shared Services Agreement

In connection with the closing of this offering, we intend to enter into a shared services agreement with Fortress for it to continue to provide consulting services and for the use of Fortress's personnel with expertise in one or more of the following areas: business development, legal, accounting, regulatory affairs, clinical operations and manufacturing. Such agreement will contain a list of Fortress employees anticipated to perform services to us and an estimate as to the percentage of each such employee's time expected be spent assisting us. We will then reimburse Fortress for a prorated portion of each such employee's fully-burdened salary, bonus (if applicable) and benefits. We will also allocate non-cash stock compensation expense of these employees based on the percentage of each employee's time spent assisting us. The employees will remain full-time employees of Fortress, and Fortress will be primarily responsible for all employment-related compensation, although we will have the authority to supervise such employees during the course of their provision of services on our behalf. With Fortress, we will periodically review the list of employees and applicable percentages for potential modifications, as necessary. The agreement will contain customary provisions regarding confidentiality, intellectual property ownership and indemnification.

Indebtedness to Fortress

Since our inception in October 2014, Fortress has funded our operations through a working capital loan pursuant to the terms of a future advance promissory note (the "Fortress Note"). Pursuant to the Fortress Note, no further advances can be made if the outstanding principal exceeds $20.0 million. As of December 31, 2020 and June 30, 2021, the principal balance of the Fortress Note was $5.2 million. This indebtedness may increase during the period of this Offering as Fortress continues to advance funds to pay our expenses. All principal amounts under the Fortress Note are due in full on or before December 31, 2024.

Transactions with Officers and Directors

Lindsay A. Rosenwald, M.D., our Executive Chairman of our board of directors, is currently Chairman and Chief Executive Officer of Fortress.

Pursuant to the Fortress Biotech, Inc. Long Term Incentive Plan, Lindsay A. Rosenwald, M.D. holds warrants to purchase 500,000 shares of our common stock from shares currently held by Fortress. This offering will not trigger any automatic exercise of these warrants. Any exercise of these options will not be dilutive of any shareholders, other than Fortress.

Policies and Procedures for Transaction with Related Persons

Prior to the consummation of this offering, our board of directors will adopt a written related person transaction policy, to be effective upon the consummation of this offering, setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships in which we were or are to be a participant, where the amount involved exceeds $120,000 and a related person had or will have a direct or indirect material interest, including without limitation purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee is tasked to consider all relevant facts and circumstances, including but not limited to whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction with an unrelated third party and the extent of the related person's interest in the transaction. All of the transactions described in this section occurred prior to the adoption of this policy.

DESCRIPTION OF CAPITAL STOCK

The following description summarizes the material terms of our capital stock as of the date of this registration statement and upon completion of our initial public offering. Because it is only a summary, it does not contain all the information that may be important to you. For a complete description of our capital stock, you should refer to our certificate of incorporation, as amended, and our bylaws, and to the provisions of applicable Delaware law.

As of June 30, 2021, the authorized capital stock of Journey consists of 50,000,000 shares of common stock, with $0.0001 par value, 6,000,000 shares of which have been designated as Class A Common Stock, as well as 5,000,000 shares of Preferred Stock, with $0.0001 par value, 1,200,000 shares of which have been designated as 8% Cumulative Convertible Class A Preferred Stock. The securities offered in this offering are shares of common stock. The Company has granted 2,121,000 options to purchase its common shares to employees as well as 785,524 unvested restricted stock units. Mr. Maraoui was granted 200,000 shares of the Company's common stock and was granted 1,250,000 options to purchase the Company's common stock and 354,024 unvested restricted stock units. The remaining 431,500 unvested restricted stock units and 2,121,000 options to purchase the Company's common shares are held by employees of the Company. In addition, the Company has 1,075,000 shares reserved to be issued to employees under it 2015 incentive stock plan. Any exercise of the foregoing options, as well vesting of the RSUs, would be dilutive to existing shareholders at the time of exercise.

Pursuant to the Fortress Biotech, Inc. Long Term Incentive Plan, Lindsay A. Rosenwald, M.D. holds warrants to purchase 500,000 shares of our common stock from the shares of Class A Common Stock currently held by Fortress. Any exercise of these options will not be dilutive of any shareholders, other than Fortress.

Class A Common Stock

Class A Common Stock is identical to our common stock other than as to voting rights and the election of directors for a definite period (as described below). On any matter presented to our stockholders for their action or consideration at any meeting of our stockholders (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Class A Common Stock will be entitled to cast for each share of Class A Common Stock held by such holder as of the record date for determining stockholders entitled to vote on such matter, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the number of shares of outstanding common stock and the denominator of which is the number of shares of outstanding Class A Common Stock (the "Class A Common Stock Ratio"). Thus, the Class A Common Stock will at all times constitute a voting majority.

For a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock (the "Class A Director Period"), the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of Journey (the "Class A Directors"). Thus, the Class A Common Stock will be entitled to elect the majority of the board of directors during the Class A Director Period.

Finally, each share of Class A Common Stock is convertible, at the option of the holder, into one fully paid and nonassessable share of common stock (the "Conversion Ratio"), subject to certain adjustments.

Other Features of Our Common Stock and Class A Common Stock

- *Voting Rights*. The holders of our common stock are entitled to one vote for each share of common stock held and the holders of our Class A Common Stock are entitled to the number of votes equal to the Class A Common Stock Ratio for each share of Class A Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors except as to the Class A Directors during the Class A Director Period. Our certificate of incorporation and bylaws do not provide for cumulative voting rights.
- *No Preemptive or Similar Rights.* The holders of our common stock and Class A Common Stock have no preemptive or subscription rights, and there are no redemption or sinking fund provisions

applicable thereto. Additionally, the holders of our common stock (excluding the holders of Class A Common Stock) have no conversion rights.

- *Adjustment to Class A Common Stock Conversion Ratio*. If Journey, at any time effects a subdivision or combination of the outstanding common stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) (by any stock split, stock dividend, recapitalization, reverse stock split or otherwise), the Conversion Ratio for the Class A Common Stock in effect immediately before that subdivision is proportionately decreased or increased, as applicable depending on whether there is a subdivision or combination, so that the number of shares of common stock issuable on conversion of each share of Class A Common Stock shall be increased or decreased, as applicable depending on whether there is a subdivision or combination, in proportion to such increase or decrease in the aggregate number of shares of common stock outstanding. Additionally, if any reorganization, recapitalization, reclassification, consolidation or merger involving the Company occurs in which the common stock (but not the Class A Common Stock) is converted into or exchanged for securities, cash or other property, then each share of Class A Common Stock becomes convertible into the kind and amount of securities, cash or other property which a holder of the number of shares of common stock of the Company issuable upon conversion of one share of the Class A Common Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction.

8% Cumulative Convertible Class A Preferred Stock

As of March 31, 2021, Journey designated 1,200,000 shares of preferred stock as 8% Cumulative Convertible Class A Preferred Stock (our "Class A Preferred Stock") pursuant to the terms of the Certificate of Designation. The terms, rights, preference and privileges of our Class A Preferred Stock are as follows:

- *Dividends*. Holders of shares of the Class A Preferred Stock ("Holders") are entitled to receive on each Dividend Payment Date (as defined below), cumulative dividends in shares of the common stock of Fortress Biotech, Inc. (NASDAQ: FBIO) ("FBIO Shares") equal to 2% (or 8% on an annualized basis) of the quotient of: (i) the product of the Subscription Price and the number of Preferred Shares held by such Holder; divided by (ii) the Discounted FBIO FMV (as defined below) on the Dividend Payment Date*; provided, however*, that in the event the FBIO Shares are not traded on a national securities exchange at the time of any Dividend Payment Date, the Holders will be entitled to receive, as liquidated damages and not as a penalty, an additional dividend equal to 1% of the quotient described above (i.e., a total of 3% for such quarter), which shall accrue and be paid, together with all other accrued and unpaid dividends, in the applicable security at the applicable conversion or exchange of the Class A Preferred Stock as specified below. Each holder will be entitled to cash in lieu of each fractional share resulting from the foregoing dividend calculation, calculated using the value of the FBIO Share dividend based on the most recent closing trading price of the FBIO Shares.

  "Discounted FBIO FMV" means a 7.5% discount to the average of the closing trading prices of FBIO Shares, as quoted on the Nasdaq Capital Market, over the 10 trading days preceding a given date.

  Dividends on our Class A Preferred Stock accrue daily and will be cumulative from, and including, the date of original issue and payable quarterly on the last day of the third month of each calendar quarter (each such date, a "Dividend Payment Date"); provided that if any Dividend Payment Date is not a business day, then the dividend that would otherwise have been payable on that Dividend Payment Date may be paid on the next succeeding business day and no interest, additional dividends or other sums will accrue on the amount so payable for the period from and after that Dividend Payment Date to that next succeeding business day.

  Any dividend payable on the Class A Preferred Stock, including dividends payable for any partial dividend period, will be computed on the basis of a 360-day year consisting of twelve 30-day months; however, the shares of Class A Preferred Stock offered hereby will be credited as having accrued dividends since the first day of the calendar month in which they are issued. All accrued and unpaid dividends on the Class A Preferred Stock shall be paid upon a liquidation or redemption of the Class A Preferred Stock.

VStock Transfer, LLC, the Company's transfer agent, will serve as paying agent for the issuance of FBIO Shares as dividends on the Class A Preferred Stock and for the payment of any cash dividends in lieu of shares elected by any Holder.

- *Ranking.* Our Class A Preferred Stock will rank, with respect to rights to the payment of dividends and the distribution of assets upon our liquidation, dissolution or winding up, (1) on a parity with all equity securities issued by the Company; (2) junior to all equity securities issued by us with terms specifically providing that those equity securities rank senior to the Class A Preferred Stock with respect to rights to the payment of dividends and the distribution of assets upon the Company's liquidation, dissolution or winding up; and (3) junior to all of the Company's existing and future indebtedness; subject to, in the cases of clause (2), the written consent of a majority of the then-outstanding shares of Class A Preferred Stock held by the Holders.
- *Registration Rights.* Fortress has filed a registration statement on Form S-3 covering the public resale in the United States of all FBIO Shares that Fortress believes, in its reasonable good faith estimation, could be issued as dividends on the Class A Preferred Stock (a "Registration Statement"). In addition, Fortress will prepare, file no later than two (2) months prior to the Mandatory Exchange Date (as may be extended as set forth below), and use its commercially reasonable efforts to cause to become effective as soon as practicable thereafter, a Registration Statement covering the public resale in the United States of all FBIO Shares that Fortress believes, in its reasonable good faith estimation, could be issued as a result of the mandatory exchange into FBIO Shares as described below. Any such Registration Statement shall be subject to the customary terms and conditions used in connection with a selling stockholder resale prospectus. In the event that, pursuant to a dividend on the Class A Preferred Stock, Fortress becomes obligated to issue a number of FBIO Shares in excess of those covered under the previously-filed Registration Statement(s), Fortress will prepare, file and use its commercially reasonable efforts to cause to become effective as soon as practicable thereafter one or more additional Registration Statements covering any balance of unregistered shares of FBIO issued as dividends or in exchange for the Class A Preferred Stock.
- *Mandatory Conversion into Journey Common Stock Upon Qualified Financing.* Immediately following the occurrence of a Qualified Financing (as defined below) occurring prior to the Mandatory Exchange Date (as defined below), all issued and outstanding Class A Preferred Stock will be mandatorily converted into:
  - a number of shares of Company common stock calculated as the quotient of: (i) the product obtained by multiplying the number of shares of Class A Preferred Stock held by a given holder by the Subscription Price; divided by (ii) the Qualified Financing Discount Price; plus
  - on a holder-by-holder basis, cash in lieu of a fractional share resulting from the calculation set forth in the immediately preceding bullet; plus
  - FBIO Shares on the accumulated and unpaid dividends to, but excluding, the conversion date (plus cash in lieu of any fractional share resulting therefrom, calculated on the same basis as the cash in lieu for dividends as set forth above).

  "Mandatory Exchange Date" means the 1st anniversary of the initial closing date, March 31, 2021; provided, however, that the Company may, in its sole discretion upon written notice to each Holder, elect to extend the Mandatory Exchange Date once by up to 180 days.

  "Qualified Financing" means the closing of an equity financing or series of related equity financings by the Company resulting in aggregate gross cash proceeds (before commissions or other expenses and excluding conversion of the Class A Preferred Stock) to the Company of at least $25,000,000 from the sale of Company common stock or equity securities convertible into Company common stock.

  "Qualified Financing Discount Price" means a 15% discount to the lowest per share price at which Company common stock or equity securities convertible into common stock (on an as-converted to common stock basis) are sold in the Qualified Financing.
- *Mandatory Conversion into Journey Common Stock Upon a Sale of the Company.* Immediately prior to the occurrence of a Sale of the Company (as defined below) occurring prior to the Mandatory

Exchange Date, and prior to the completion of a Qualified Financing (and not in connection with a Qualified Financing), all issued and outstanding Class A Preferred Stock will be mandatorily converted into:

- a number of shares of Journey common stock calculated as the quotient of: (i) the product obtained by multiplying the number of shares of Class A Preferred Stock held by a given holder by the Subscription Price; divided by (ii) the Sale of the Company Discount Price; plus
- on a holder-by-holder basis, cash in lieu of a fractional share resulting from the calculation set forth in the immediately preceding bullet; plus
- cash on the accumulated and unpaid dividends to, but excluding, the conversion date.

"Sale of the Company" means (i) a merger or consolidation in which (1) the Company is a constituent party or (2) a subsidiary of the Company is a constituent party and the Company issues shares of its capital stock pursuant to such merger or consolidation, but excluding in either case any such merger or consolidation involving the Company or a subsidiary in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (y) the surviving or resulting corporation or (z) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; (ii) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all the assets of the Company and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Company if substantially all of the assets of the Company and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Company; (iii) a transaction, or series of related transactions, in which any person or entity (or a group of related persons or entities), other than an affiliate of the Company, acquires, directly or indirectly, fifty percent (50%) of the Company's then-outstanding common stock. Notwithstanding any of the foregoing, the sale by the Company of capital stock for the purpose of financing its business shall not be deemed to be a Sale of the Company.

"Sale of the Company Discount Price" means a 15% discount to the lowest price per share of Company common stock or equity securities convertible into Company common stock being paid in the Sale of the Company, subject to certain possible adjustments as set forth in the Certificate of Designations for the Class A Preferred Stock.

- *Mandatory Exchange into FBIO Common Stock on Mandatory Exchange Date.* In the event that neither a Qualified Financing nor a Sale of the Company has occurred by the Mandatory Exchange Date, all issued and outstanding Class A Preferred Stock will be mandatorily exchanged into:
  - a number of FBIO Shares calculated as the quotient of: (i) the product obtained by multiplying the number of shares of Class A Preferred Stock held by a given holder by $25 per share of Class A Preferred Stock (the "Subscription Price"); divided by (ii) the Discounted FBIO FMV; plus
  - on a holder-by-holder basis, cash in lieu of a fractional share resulting from the calculation set forth in the immediately preceding bullet; plus
  - cash on the accumulated and unpaid dividends to, but excluding, the conversion date.
- *Contingent Consideration Remunerable to Fortress.* To the extent any FBIO Shares are issued to Holders pursuant to any of the transactions or securities described in this Memorandum (including as a dividend on the Class A Preferred Stock or in connection with a Mandatory Exchange into FBIO Shares on the Mandatory Exchange Date), the Company will issue to Fortress, as consideration therefor, a number of shares of Company common stock with a fair market value equal to the fair market value of any FBIO Shares so issued, or the equivalent, in cash or debt accumulation on the

Fortress Note (or any combination of the foregoing). However, the issuance by Fortress of any FBIO Shares is not a condition precedent to any such Company issuance.

- *No Maturity Date or Optional Conversion or Redemption.* Our Class A Preferred Stock has no maturity date, and the Company is not required to convert or redeem the Class A Preferred Stock at any Holder's option. Accordingly, the Class A Preferred Stock will remain outstanding indefinitely until occurrence of one of the following three events, as described above: "Mandatory Conversion into Journey Common Stock upon Qualified Financing"; "Mandatory Conversion into Journey Common Stock upon Sale of the Company"; or "Mandatory Exchange into FBIO Common Stock on Mandatory Exchange Date." The Company is not required to set aside funds to redeem the Class A Preferred Stock.
- *No Voting Rights.* Except as required by applicable Delaware law, holders of our Class A Preferred Stock will not be entitled to vote on any matter submitted for the vote of other stockholders, including, without limitation, a Company change-of-control transaction, exclusive license or asset disposition that may require a majority vote of holders of other classes or series of our capital stock. Notwithstanding the foregoing, the consummation of any such transaction will in no way impact the Company's or Fortress' payment obligations hereunder, and the Company and Fortress will continue to be obligated to make all issuances and payments due hereunder until a redemption or exchange event occurs, as described elsewhere herein.

Listing

We have applied to list our common stock on the Nasdaq Capital Market under the symbol "DERM." No assurance can be given that our application will be approved.

Transfer Agent and Registrar

Upon the closing of this offering, the transfer agent and registrar for our common stock will be VStock Transfer, LLC. The transfer agent's address is 18 Lafayette Place, Woodmere, New York 11598 and its phone number is 212-828-8436.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our common stock, and a liquid trading market for our common stock may not develop or be sustained after this offering. Future sales of substantial amounts of our common stock in the public market, including shares issued upon exercise of outstanding options, or the anticipation of these sales, could materially and adversely affect market prices prevailing from time to time and could impair our ability to raise capital through sales of equity or equity-related securities.

As described below, only a limited number of shares of our common stock will be available for sale in the public market for a period of several months after completion of this offering due to contractual and legal restrictions on resale described below. Nevertheless, sales of a substantial number of shares of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could materially and adversely affect the prevailing market price of our common stock.

Upon the closing of this offering, based on the number of shares of common stock outstanding as of , 2021, we will have outstanding an aggregate of shares of our common stock, assuming the underwriters do not exercise their over-allotment option.

Of the shares to be outstanding immediately after the closing of this offering, we expect that the shares to be sold in this offering will be freely tradable without restriction under the Securities Act unless purchased by our "affiliates," as that term is defined in Rule 144 under the Securities Act. The remaining shares of our common stock outstanding after this offering will be "restricted securities" under Rule 144, and we expect that substantially all of these restricted securities will be subject to the 180-day lock-up period under the lock-up agreements as described below. These restricted securities may be sold in the public market only if registered or pursuant to an exemption from registration, such as Rule 144 or Rule 701 under the Securities Act.

Rule 144

Affiliate Resales of Restricted Securities

In general, subject to the lock-up restrictions described below, beginning 90 days after the effective date of the registration statement, of which this prospectus is a part, a person who is an affiliate of ours, or who was an affiliate at any time during the 90 days before a sale, who has beneficially owned shares of our common stock for at least six months would be entitled to sell in "broker's transactions" or certain "riskless principal transactions" or to market makers, a number of shares within any three-month period that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately shares immediately after this offering; or
- the average weekly trading volume in our common stock on the Nasdaq Capital Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to such sale.

Affiliate resales under Rule 144 are also subject to the availability of current public information about us. In addition, if the number of shares being sold under Rule 144 by an affiliate during any three-month period exceeds 5,000 shares or has an aggregate sale price in excess of $50,000, the seller must file a notice on Form 144 with the SEC and the Nasdaq Capital Market concurrently with either the placing of a sale order with the broker or the execution directly with a market maker.

Non-Affiliate Resales of Restricted Securities

In general, subject to the lock-up restrictions described below, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, a person who is not an affiliate of ours at the time of sale, and has not been an affiliate at any time during the three months preceding a sale, and who has beneficially owned shares of our common stock for at least six months but less than a year, is entitled to sell such shares subject only to the availability of current public information about us.

If such person has held our shares for at least one year, such person can resell under Rule 144(b)(1) without regard to any Rule 144 restrictions, including the 180-day public company requirement and the current public information requirement.

Non-affiliate resales are not subject to the manner of sale, volume limitation or notice filing provisions of Rule 144.

Upon expiration of the 180-day lock-up period described below, approximately shares of our common stock will be eligible for sale under Rule 144, including shares eligible for resale immediately upon the closing of this offering as described above. We cannot estimate the number of shares of our common stock that our existing stockholders will elect to sell under Rule 144.

Rule 701

Rule 701 under the Securities Act generally allows a stockholder who purchased shares of our common stock pursuant to a written compensatory plan or contract and who is not deemed to have been an affiliate of ours during the immediately preceding 90 days to sell these shares in reliance upon Rule 144, but without being required to comply with the public information, holding period, volume limitation, or notice provisions of Rule 144. Rule 701 also permits affiliates of ours to sell their Rule 701 shares under Rule 144 without complying with the holding period requirements of Rule 144. All holders of Rule 701 shares, however, are required to wait until 90 days after the date of this prospectus before selling such shares pursuant to Rule 701 and until expiration of the 180-day lock-up period described below.

Lock-Up Agreements

We, our executive officers and directors and each holder of our common stock have agreed not to transact in any common stock (including, in the case of Fortress, the Class A Common Stock) or securities convertible into or exchangeable or exercisable for common stock (including, in the case of Fortress, the Class A Common Stock), for 180 days after the date of this prospectus, subject to specified exceptions, without first obtaining the written consent of B. Riley Securities, Inc. Specifically, these persons have agreed, with certain limited exceptions, not to directly or indirectly: offer; pledge; sell; contract to sell; sell any option or contract to purchase; purchase any option or contract to sell; or grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, or enter into any hedging, swap or other agreement or transaction that transfers any of the economic consequences of ownership of shares of our common stock or any options to purchase shares of our common stock, or any securities convertible into or exchangeable for shares of common stock, during the period from the date of this prospectus continuing through the date 180 days after the date of this prospectus, except with the prior written consent of the representative of the underwriters, and certain other limited exceptions. These agreements are described in the section titled “Underwriting.”

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of the material U.S. federal income tax consequences relating to the acquisition, ownership and disposition of our common stock as of the date hereof. Except where noted, this summary deals only with our common stock that is held as a capital asset (within the meaning of Section 1221 of the Internal Revenue Code of 1986, as amended, or the Code, by a "non-U.S. holder" (as defined below).

For purposes of this summary, a "non-U.S. holder" means a beneficial owner of our common stock (other than a partnership or any other entity treated as a partnership for U.S. federal income tax purposes) that is not for U.S. federal income tax purposes any of the following:

- an individual citizen or resident of the U.S.;
- a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations ("Treasury Regulations") to be treated as a United States person.

This summary is based upon provisions of the Code and Treasury Regulations, administrative rulings and judicial decisions currently in effect, all as of the date hereof and all subject to change at any time, possibly with retroactive effect, or to different interpretation by the Internal Revenue Service ("IRS"). This summary does not address all aspects of U.S. federal taxes and does not address any foreign, state, local or other tax considerations that may be relevant to non-U.S. holders in light of their personal circumstances. In addition, this summary does not represent a detailed description of the U.S. federal income tax consequences applicable to non-U.S. holders that are subject to special treatment under the U.S. federal income tax laws (including a non-U.S. holder that is a United States expatriate, "controlled foreign corporation," "passive foreign investment company," "real estate investment trust," "regulated investment company," dealer in securities or currencies, financial institution, tax-exempt entity, insurance company, person holding our common stock as part of a hedging, integrated, conversion or constructive sale transaction or a straddle, trader in securities that elects to use a mark-to-market method of accounting, person liable for the alternative minimum tax, person who acquired our common stock as compensation for services, or a partnership or other pass-through entity, or partner in a partnership or beneficial owner of a pass-through entity that holds our common stock for U.S. federal income tax purposes). We cannot provide assurance that a change in law will not alter significantly the tax considerations that we describe in this summary.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) holds our common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. Non-U.S. holders that are partners of a partnership holding our common stock should consult their tax advisors.

Non-U.S. holders considering the purchase of our common stock should consult their own tax advisors concerning the particular U.S. federal income and estate tax consequences of the ownership of our common stock, as well as the consequences arising under the laws of any other taxing jurisdiction.

Distribution on our common stock

As indicated in the "Dividend Policy" section of this prospectus, we have never paid cash dividends on any of our capital stock and currently intend to retain our future earnings, if any, to fund the development and growth of our business.

In the event that we do make a distribution, distributions paid on our common stock will be treated as dividends to the extent paid out of current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the

excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's tax basis in the common stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "Gains on disposition of our common stock." Dividends paid to a non-U.S. holder of our common stock generally will be subject to U.S. federal withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States (and, if required by an applicable income tax treaty, are attributable to a United States permanent establishment) are not subject to United States federal withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are subject to U.S. federal income tax on a net-income basis in the same manner as if the non-U.S. holder were a "United States person" as defined in the Code. Any such effectively connected dividends received by a foreign corporation may, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty.

A non-U.S. holder who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to complete IRS Form W-8BEN or W-8BEN-E (or other applicable form) and certify under penalty of perjury that it is not a "United States person" as defined in the Code and is eligible for treaty benefits or (b) if the common stock is held through certain foreign intermediaries, to satisfy the relevant certification requirements of applicable Treasury Regulations. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

A non-U.S. holder eligible for a reduced rate of United States withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS. Dividend distributions to non-U.S. holders would also be subject to the rules concerning backup withholding and FATCA, as further discussed below.

Gain on disposition of our common stock

Subject to the discussions below under the heading "Information reporting and backup withholding" and "FATCA withholding requirements," any gain realized on the disposition of our common stock by a non-U.S. holder generally will not be subject to U.S. federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States (and, if required by an applicable income tax treaty, is attributable to a United States permanent establishment of the non-U.S. holder);
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition, and certain other conditions are met; or
- we are or have been a "United States real property holding corporation" for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of the disposition or such non-U.S. holder's holding period for our common stock and such non-U.S. holder held (at any time during the shorter of the five-year period ending on the date of the disposition or such non-U.S. holder's holding period) more than 5% of our common stock.

An individual non-U.S. holder described in the first bullet point immediately above will be subject to tax on the net gain derived from the sale under regular graduated U.S. federal income tax rates. If a non-U.S. holder that is a foreign corporation falls under the first bullet point immediately above, it will be subject to tax on its net gain in the same manner as if it were a "United States person" as defined in the Code and, in addition, may, under certain circumstances, be subject to a branch profits tax equal to 30% of its effectively connected earnings and profits or at such lower rate as may be specified by an applicable income tax treaty.

We believe we have not been and are not currently a "United States real property holding corporation" for U.S. federal income tax purposes; however, no assurance can be given that we are not or will not become one in the future. If, however, we are or become a "United States real property holding corporation," so long as our common stock continues to be regularly traded on an established securities market, only a non-U.S. holder who holds, or held (at any time during the shorter of the five-year period ending on the date of disposition or the non-U.S. holder's holding period) more than 5% of our common stock will be subject

to U.S. federal income tax on the disposition of the common stock. No assurance can be given, however, that our common stock will continue to be treated as regularly traded on an established securities market for applicable U.S. federal income tax purposes. Non-U.S. holders should consult their own tax advisors about the consequences if we are, or become, a "United States real property holding corporation."

Information reporting and backup withholding

Information returns are required to be filed with the IRS and reporting the amount of dividends paid to each non-U.S. holder and the tax withheld with respect to such dividends, regardless of whether withholding was required. Copies of the information returns reporting such dividends and withholding may also be made available to the tax authorities in the country in which the non-U.S. holder resides under the provisions of an applicable income tax treaty.

A non-U.S. holder will be subject to backup withholding for dividends paid to it unless it certifies under penalty of perjury that it is not a "United States person" as defined in the Code (and the payor does not have actual knowledge or reason to know that the non-U.S. holder is a "United States person" as defined in the Code), or it otherwise establishes an exemption.

Information reporting and, depending on the circumstances, backup withholding will apply to the proceeds of a sale of our common stock within the United States or conducted through certain United States-related financial intermediaries, unless the non-U.S. holder certifies under penalty of perjury that it is not a "United States person" as defined in the Code (and the payor does not have actual knowledge or reason to know that the non-U.S. holder is a "United States person" as defined in the Code), or it otherwise establishes an exemption.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability provided the required information is timely furnished to the IRS.

FATCA withholding requirements

Sections 1471 to 1474 of the Code (such sections, and the Treasury Regulations and administrative guidance issued thereunder, commonly referred to as FATCA) impose a 30% United States withholding tax on certain "withholdable payments" made to a "foreign financial institution" or a "nonfinancial foreign entity." "Withholdable payments" include payments of dividends and the gross proceeds from a disposition of certain property (such as shares of our common stock), if such disposition occurs after December 31, 2018. In general, if a non-U.S. holder is a "foreign financial institution," the 30% withholding tax will apply to withholdable payments made to it, unless it enters into an agreement with the United States Department of Treasury to collect and provide substantial information regarding its United States account holders, including certain account holders that are foreign entities with United States owners, and to withhold 30% on certain "passthru payments." If it is a "non-financial foreign entity," FATCA also generally will impose a withholding tax of 30% on withholdable payments made to it unless it provides the withholding agent with a certification that it does not have any "substantial United States owners" or a certification identifying its direct and indirect substantial United States owners. Intergovernmental agreements between the United States and a non-U.S. holder's resident country may modify the foregoing requirements.

Non-U.S. holders should consult their own tax advisors regarding the impact of FATCA on their ownership and disposition of shares of our common stock and the potential applicability of any intergovernmental agreements.

UNDERWRITING

B. Riley Securities, Inc. is acting as lead managing underwriter of the offering and acting as representative of the underwriters named below. We have entered into an underwriting agreement with the underwriters, dated , 2021. Subject to the terms and conditions of the underwriting agreement, we agreed to sell to the underwriters, and the underwriters agreed to purchase shares of our common stock, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus.

Underwriter	Number of Shares
B. Riley Securities, Inc.	
Total	

The underwriters are committed to purchase all of the shares of common stock offered by us if any are taken, other than those covered by the option to purchase additional shares described below. The underwriting agreement provides that the underwriters' obligations to purchase shares of our common stock are subject to conditions contained in the underwriting agreement. A copy of the underwriting agreement has been filed as an exhibit to the registration statement of which this prospectus forms a part.

We have been advised by B. Riley Securities, Inc. that it proposes to offer shares of our common stock directly to the public at the public offering price set forth on the cover page of this prospectus, and at this price less a concession not in excess of $ per share of common stock to other dealers. The underwriters may allow, and certain dealers may re-allow, a discount from the concession not in excess of $ per share of common stock to certain brokers and dealers. After this offering, the offering price, concessions and other selling terms may be changed by the underwriters.

None of our securities included in this offering may be offered or sold, directly or indirectly, nor may this prospectus and any other offering material or advertisements in connection with the offer and sales of any of our common stock be distributed or published in any jurisdiction, except under circumstances that will result in compliance with the applicable rules and regulations of that jurisdiction. Persons who receive this prospectus are advised to inform themselves about and to observe any restrictions relating to this offering of our common stock and the distribution of this prospectus. This prospectus is neither an offer to sell nor a solicitation of any offer to buy any of our common stock included in this offering in any jurisdiction where that would not be permitted or legal.

Each underwriter has advised us that it does not intend to confirm sales to any accounts over which it exercises discretionary authority.

Underwriting Discount and Expenses

The following table summarizes the underwriting discount and commission to be paid to the underwriters by us.

	Per Share	Total Without Exercise of Over-Allotment	Total With Exercise of Over-Allotment
Public offering price	$	$	$
Underwriting discounts and commissions	$	$	$
Proceeds, before expenses to us	$	$	$

In addition to the discount set forth in the above table, we have agreed to reimburse the underwriters up to $150,000 for certain of their fees and expenses relating to the offering. These expenses are payable by us.

Over-Allotment Option

In addition to the discount set forth in the above table, we have granted to the underwriters an option, exercisable not later than 45 days after the date of this prospectus, to purchase up to an additional 15% of

the shares of common stock firmly committed in this offering at the public offering price, less the underwriting discount, set forth on the cover page of this prospectus. The underwriters may exercise the option solely to cover over-allotments, if any, made in connection with this offering. If any additional shares of our common stock are purchased pursuant to the over-allotment option, the underwriters will offer these additional shares of our common stock on the same terms as those on which the other shares of common stock are being offered hereby.

Subsequent Financing Option

For a period of 12 months from the closing of this offering, we have granted B. Riley Securities, Inc. the right to participate as lead managing underwriter or lead placement agent in certain proposed subsequent financings, including our issuance of debt or equity securities, other than issuance of equity awards or shares upon the exercise or settlement of equity awards pursuant to our employee benefit plans, option and employee purchase plans, or other employee compensation plans authorized by our board of directors.

Determination of Offering Price Listing

We have applied to list our common stock on The Nasdaq Capital Market under the symbol "DERM." In order to meet the requirements for listing on that exchange, the underwriters have undertaken to sell a minimum number of shares to a minimum number of beneficial owners as required by that exchange.

Before this offering, there has been no public market for our common stock. Our lead managing underwriter, B. Riley Securities, Inc., is not obligated to make a market in our securities, and even if it chooses to make a market, can discontinue doing so at any time without notice. Neither we nor any underwriter can provide any assurance that an active and liquid trading market in our securities will develop or, if developed, that the market will continue.

The public offering price of the shares offered by this prospectus has been determined by negotiation between us and the underwriters. Among the factors considered in determining the public offering price of the shares were:

- our history and our prospects;
- the industry in which we operate;
- our past and present operating results;
- the previous experience of our executive officers; and
- the general condition of the securities markets at the time of this offering.

The offering price stated on the cover page of this prospectus should not be considered an indication of the actual value of the shares. Upon the commencement of trading, the price of our shares will be subject to change as a result of market conditions and other factors, and we cannot assure you that the shares can be resold at or above the public offering price.

Lock-Up Agreements

We, our executive officers and directors and each holder of our common stock have agreed not to sell or transfer any common stock or securities convertible into or exchangeable or exercisable for common stock, for 180 days after the date of this prospectus, subject to specified exceptions, without first obtaining the written consent of B. Riley Securities, Inc. Specifically, these persons have agreed, with certain limited exceptions, not to directly or indirectly:

- offer, pledge, sell, contract to sell or lend any common stock;
- sell any option or contract to purchase any common stock;
- purchase any option or contract to sell any common stock;
- grant any option, right or warrant to purchase any common stock;
- otherwise transfer or dispose of any common stock;

- make a demand or exercise any right with respect to the registration of any common stock;
- enter into any swap or any other agreement or any transaction that transfers, in whole or in part, the economic consequences of ownership of common stock, whether any such swap or transaction is to be settled by delivery of common stock or other securities, in cash or otherwise;
- publicly disclose the intention to make any offer, sale, pledge or disposition, or to enter into any transaction, swap hedge or other arrangement relating to any common stock; or
- in the case of the Company, file or cause to be filed any registration statement (other than a registration statement on Form S-8) with the Commission relating to the offering of any shares of our capital stock or any securities convertible into or exercisable or exchangeable for shares of our capital stock.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

Indemnification

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act relating to losses or claims resulting from material misstatements in or omissions from this prospectus, the registration statement of which this prospectus forms a part, certain free writing prospectuses that may be used in the offering and in any marketing materials used in connection with this offering and to contribute to payments the underwriters may be required to make in respect of those liabilities.

Short Positions and Penalty Bids

The underwriters may engage in over-allotment, syndicate covering transactions and penalty bids or purchases for the purpose of pegging, fixing or maintaining the price of the common stock, in accordance with Regulation M under the Exchange Act.

- Over-allotment involves sales by the underwriters of shares in excess of the number of shares the underwriters are obligated to purchase, which creates a syndicate short position. The short position may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by an underwriter is not greater than the number of shares that it may purchase in the over-allotment option. In a naked short position, the number of shares involved is greater than the number of shares in the over-allotment option. The underwriters may close out any short position by either exercising their over-allotment option and/or purchasing shares in the open market.
- Syndicate covering transactions involve purchases of the common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which it may purchase shares through the over-allotment option. If the underwriters sell more shares than could be covered by the over-allotment option, a naked short position, the position can only be closed out by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there could be downward pressure on the price of the shares in the open market after pricing that could adversely affect investors who purchase in the offering.
- Penalty bids permit an underwriter to reclaim a selling concession from a syndicate member when the shares originally sold by the syndicate member are purchased in a stabilizing or syndicate covering transaction to cover syndicate short positions.

These syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of the common stock. As a result, the price of the common stock may be higher than the price that might otherwise exist in the open market. These transactions may be effected on the Nasdaq Capital Market, and if commenced, they may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the common stock. In addition, neither we nor the underwriters make any representation that the underwriters will engage in these transactions or that any transaction, once commenced, will not be discontinued without notice.

Electronic Distribution

A prospectus in electronic format may be made available on the Internet sites or through other online services maintained by the underwriters, or by their affiliates. In those cases, prospective investors may view offering terms online. Other than the prospectus in electronic format, the information on an underwriter's website and any information contained in any other website maintained by an underwriter is not part of the prospectus or the registration statement of which this prospectus forms a part, has not been approved and/or endorsed by us or the underwriters in their capacity as underwriters and should not be relied upon by investors.

The underwriters' compensation in connection with this offering is limited to the fees and expenses described above under "*Underwriting Discount and Expenses*."

Other Relationships

The underwriters and certain of their affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, investment research, principal investment, hedging, financing and brokerage activities. The underwriters and certain of their affiliates may in the future engage in investment banking and other commercial dealings in the ordinary course of business with us and our affiliates, for which it may in the future receive customary fees, commissions and expenses.

In addition, in the ordinary course of its business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for its own account and for the accounts of its customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Listing

In connection with this offering, we have applied to have our common stock listed on the Nasdaq Capital Market under the symbol "DERM." There is no assurance, however, that our common stock will ever be listed on the Nasdaq Capital Market or any other national securities exchange.

Selling Restrictions

No action has been taken in any jurisdiction except the United States that would permit a public offering of our common stock, or the possession, circulation or distribution of this prospectus or any other material relating to us or our common stock in any jurisdiction where action for that purpose is required. Accordingly, the shares may not be offered or sold, directly or indirectly, and neither this prospectus nor any other offering material or advertisements in connection with the shares may be distributed or published, in or from any country or jurisdiction except in compliance with any applicable rules and regulations of any such country or jurisdiction.

LEGAL MATTERS

Certain legal matters will be passed upon for us by Alston & Bird LLP, New York, New York. McGuireWoods LLP, New York, New York is acting as counsel for the underwriters in connection with this offering.

EXPERTS

The consolidated financial statements of Journey Medical Corporation as of December 31, 2020 and December 31, 2019, and for each of the years then ended have been included herein and in the registration statement in reliance on the report of KPMG LLP, an independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our common stock offered by this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement, some of which is contained in exhibits to the registration statement as permitted by the rules and regulations of the SEC. For further information with respect to us and our common stock, we refer you to the registration statement, including the exhibits filed as a part of the registration statement. Statements contained in this prospectus concerning the contents of any contract or any other document are not necessarily complete. If a contract or document has been filed as an exhibit to the registration statement, please see the copy of the contract or document that has been filed. Each statement in this prospectus relating to a contract or document filed as an exhibit is qualified in all respects by the filed exhibit. The SEC maintains a website that contains reports, proxy statements and other information about issuers, like us, that file electronically with the SEC. The address of that website is www.sec.gov.

As a result of this offering, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with this law, will file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection at the website of the SEC referred to above. We also maintain a website at www.jmcderm.com where, upon closing of this offering, you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information on or that can be accessed through our website is not a part of this prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

JOURNEY MEDICAL CORPORATION
INDEX TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

JOURNEY MEDICAL CORPORATION
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

JOURNEY MEDICAL CORPORATION

CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	June 30, 2021	December 31, 2020
	(Unaudited)	
ASSETS		
Current assets		
Cash	$ 12,176	$ 8,246
Accounts receivable, net of reserves	26,193	23,928
Inventory	14,315	1,404
Prepaid expenses and other current assets	789	1,664
Total current assets	53,473	35,242
Long-term assets		
Intangible assets, net	13,701	15,029
Operating lease right-of-use asset, net	133	175
Deferred tax assets	5,269	1,454
Other assets	149	6
Total long-term assets	19,252	16,664
Total assets	**$ 72,725**	**$ 51,906**
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	$ 4,245	$ 1,839
Accounts payable, related party	345	117
Accrued expenses	35,364	21,498
Accrued expenses, related party	500	—
Installment payments – licenses, short-term (net of debt discount of $639 and $778 as of June 30, 2021 and December 31, 2020, respectively)	3,861	4,522
Operating lease liabilities, short-term	94	85
Total current liabilities	44,409	28,061
Income tax payable	—	99
Note payable, related party	5,245	5,220
Installment payments – licenses, long-term (net of debt discount of $565 and $863 as of June 30, 2021 and December 31, 2020, respectively)	6,435	8,137
Convertible class A preferred stock settled note (net of debt discount of $1,824 as of June 30, 2021)	13,092	—
Derivative warrant liability	4,287	—
Operating lease liabilities, long-term	49	97
Total liabilities	**73,517**	**41,614**
Commitments and contingencies		
Stockholders' equity (deficit)		
Common stock, $.0001 par value, 50,000,000 shares authorized, 3,161,333 and 3,151,333 shares issued and outstanding as of June 30, 2021 and December 31, 2020, respectively	—	—
Common stock – Class A, $.0001 par value, 50,000,000 shares authorized, 6,000,000 shares issued and outstanding as of June 30, 2021 and December 31, 2020	1	1
Additional paid-in capital	5,684	5,171
Retained earnings (accumulated deficit)	(6,477)	5,120
Total stockholders' equity (deficit)	(792)	10,292
Total liabilities and stockholders' equity (deficit)	**$ 72,725**	**$ 51,906**

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

JOURNEY MEDICAL CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)
(unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Product revenue, net	$ 15,288	$ 9,415	$ 26,007	$ 21,361
Operating expenses				
Cost of goods sold – product revenue	7,484	3,124	11,392	6,934
Research and development	29	—	29	—
Research and development – licenses acquired	13,743	—	13,743	—
Selling, general and administrative	7,795	4,752	14,021	10,441
Total operating expenses	29,051	7,876	39,185	17,375
Income (loss) from operations	(13,763)	1,539	(13,178)	3,986
Other expense				
Interest expense	1,342	155	1,563	305
Change in fair value of derivative liability	182	—	182	—
Total other expense	1,524	155	1,745	305
Income (loss) before income taxes	(15,287)	1,384	(14,923)	3,681
Income tax (benefit) expense	(3,422)	929	(3,326)	929
Net (loss) income	**$ (11,865)**	**$ 455**	**$ (11,597)**	**$ 2,752**
Net (loss) income per common share – basic	$ (1.30)	$ 0.05	$ (1.27)	$ 0.30
Net (loss) income per common share – diluted	$ (1.30)	$ 0.04	$ (1.27)	$ 0.25
Weighted average common shares outstanding – basic	9,161,333	9,133,333	9,159,841	9,133,333
Weighted average common shares outstanding – diluted	9,161,333	10,832,990	9,159,841	10,826,279

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

JOURNEY MEDICAL CORPORATION

CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share data)

Six Months Ended June 30, 2021

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity / (Deficit)
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2020	**3,151,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,171**	**$ 5,120**	**$ 10,292**
Stock-based compensation	—	—	—	—	33	—	33
Exercise of options for cash	10,000	—	—	—	7	—	7
Contribution of capital – extinguishment of related party payable	—	—	—	—	473	—	473
Net loss	—	—	—	—	—	(11,597)	(11,597)
Balance as of June 30, 2021 (Unaudited)	**3,161,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,684**	**$ (6,477)**	**$ (792)**

Three Months Ended June 30, 2021

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity / (Deficit)
	Shares	Amount	Shares	Amount			
Balance as of March 31, 2021 (Unaudited)	**3,161,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,378**	**$ 5,388**	**$ 10,767**
Stock-based compensation	—	—	—	—	11	—	11
Contribution of capital – extinguishment of related party payable	—	—	—	—	295	—	295
Net loss	—	—	—	—	—	(11,865)	(11,865)
Balance as of June 30, 2021 (Unaudited)	**3,161,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,684**	**$ (6,477)**	**$ (792)**

Six Months Ended June 30, 2020

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of December 31, 2019	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 2,914**	**$ (163)**	**$ 2,752**
Stock-based compensation	—	—	—	—	99	—	99
Contribution of capital – extinguishment of related party payable	—	—	—	—	854	—	854
Net income	—	—	—	—	—	2,752	2,752
Balance as of June 30, 2020 (Unaudited)	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 3,867**	**$ 2,589**	**$ 6,457**

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

JOURNEY MEDICAL CORPORATION

CONDENSED CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT) (continued)
(in thousands, except share data)

Three Months Ended June 30, 2020

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings	Total Shareholders' Equity
	Shares	Amount	Shares	Amount			
Balance as of March 31, 2020 (Unaudited)	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 2,973**	**$ 2,134**	**$ 5,108**
Stock-based compensation	—	—	—	—	40	—	40
Contribution of capital – extinguishment of related party payable	—	—	—	—	854	—	854
Net income	—	—	—	—	—	455	455
Balance as of June 30, 2020 (Unaudited)	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 3,867**	**$ 2,589**	**$ 6,457**

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

JOURNEY MEDICAL CORPORATION

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Six Months Ended June 30,	
	2021	**2020**
Cash flows from operating activities		
Net (loss) income	$ (11,597)	$ 2,752
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation expenses	—	3
Bad debt (reserve) expense	(57)	76
Non-cash interest expense	1,025	305
Amortization of debt discount	270	—
Amortization of license fee	1,325	710
Amortization of operating lease right-of-use assets	42	45
Stock-based compensation	33	99
Deferred taxes (benefit) provision	(3,414)	44
Extinguishment of related party income tax payable	72	885
Change in fair value of derivative liability	182	—
Research and development-licenses acquired, expense	3,743	—
Changes in operating assets and liabilities:		
Accounts receivable	(2,208)	1,692
Inventory	(12,911)	(351)
Prepaid expenses and other current assets	950	100
Other assets	(143)	(200)
Accounts payable	2,131	(607)
Accounts payable, related party	252	27
Accrued expenses	13,866	(4,372)
Accrued expenses, related party	500	—
Income tax payable	(99)	(14)
Lease liabilities	(39)	(45)
Net cash (used in) provided by operating activities	(6,077)	1,149
Cash flows from financing activities		
Proceeds from the exercise of options	7	—
Payment of license note payable	(2,800)	—
Proceeds from convertible preferred shares	14,332	—
Payment of debt issuance costs associated with convertible preferred shares	(1,532)	—
Net cash provided by financing activities	10,007	—
Net increase in cash	3,930	1,149
Cash at the beginning of the period	8,246	4,801
Cash at the end of the period	**$ 12,176**	**$ 5,950**
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 157	$ 61
Supplemental disclosure of non-cash financing and investing activities:		
Unpaid debt offering cost	$ 200	$ —
Unpaid deferred offering cost	$ 75	$ —
Derivative warrant liability associated with convertible preferred shares	$ 362	$ —
Extinguishment of related party payable relates to deferred tax assets	$ 401	$ (31)

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

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND PLAN OF BUSINESS OPERATIONS

Journey Medical Corporation (the Company) was formed on July 18, 2014. The Company is a commercial-stage pharmaceutical company that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. The current product portfolio includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. The Company acquires rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through their exclusive field sales organization.

As of June 30, 2021 and December 31, 2020, the Company is a majority-owned subsidiary of Fortress Biotech, Inc. (“Fortress” or “Parent”).

Liquidity and Capital Resources

Since inception, the Company’s operations have been financed primarily through a working capital note from Fortress, cash received from customers and proceeds from the Company’s 8% Cumulative Convertible Class A Preferred Offering. For the next twelve months from the issuance of these unaudited interim condensed consolidated financial statements the Company will be able to fund its operations through a combination of its operating activities and the East West Bank Working Line of Credit of $7.5 million, see Note 12.

The Company regularly evaluates market conditions, its liquidity profile, and various financing alternatives for opportunities to enhance its capital structure. The Company may seek to raise capital through debt or equity financings to expand its product portfolio. If such funding is not available or not available on terms acceptable to the Company, the Company’s current plans for expansion of its product portfolio will be curtailed.

In addition to the foregoing, the Company does not expect any material impact on its revenue levels and its liquidity due to the worldwide spread of COVID-19. However, the Company is continuing to assess the impact the spread of COVID-19 may have on its future revenue streams and operations.

NOTE 2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The accompanying unaudited interim condensed consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America (“GAAP”). Accordingly, they do not include all of the information and footnotes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments necessary for the fair statement of the balances and results for the periods presented. Certain information and footnote disclosures normally included in the Company’s annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted. These unaudited interim condensed consolidated financial statement results are not necessarily indicative of results to be expected for the full fiscal year or any future period. The Company’s unaudited interim condensed consolidated financial statements include the accounts of the Company and the accounts of the Company’s wholly-owned subsidiary, JG Pharma, Inc. (“JG” or “JG Pharma”). All intercompany balances and transactions have been eliminated.

Emerging Growth Company

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board (“FASB”), or other standard setting bodies and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not

have a material impact on the Company's unaudited interim condensed consolidated financial statements upon adoption. Under the Jumpstart Our Business Startups Act of 2012, as amended, the Company upon completion of a public offering would meet the definition of an emerging growth company and would elect the extended transition period for complying with new or revised accounting standards, which delays the adoption of these accounting standards until they would apply to private companies.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates made by management include provisions for product returns, coupons, rebates, chargebacks, discounts, allowances and distribution fees paid to certain wholesalers, inventory realization and useful lives of amortizable intangible assets. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company's future results of operations will be affected.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one segment.

Cash

The Company considers highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash at June 30, 2021 and December 31, 2020 consisted entirely of cash in institutions in the United States. Balances at certain institutions have exceeded Federal Deposit Insurance Corporation insured limits.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist primarily of cash. Periodically, the Company may maintain deposits in financial institutions in excess of government insured limits. Management believes that the Company is not exposed to significant credit risk as the Company's deposits are held at financial institutions that management believes to be of high credit quality. The Company has not experienced any losses on these deposits.

The Company's accounts receivable primarily represent amounts due from drug wholesalers and specialty pharmacies in the United States. The Company performs periodic credit evaluations of customers and does not require collateral. An allowance for doubtful accounts is maintained for potential credit losses based on the aging of accounts receivable, historical bad debts experience, and the customer's current ability to pay its obligations to the Company. Accounts receivables balances are written off against the allowance when it is probable that the receivable will not be collected. See Note 15 for significant customers.

Revenue Recognition

The Company records revenue in accordance with the provisions of Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of this revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. Our revenues primarily result from contracts with customers, which are generally short-term and have a single performance obligation — the delivery of product. The Company's performance obligation to deliver products is satisfied at the point in time that the goods are received by the

customer, which is when the customer obtains title to and has the risks and rewards of ownership of the products. The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for transferring promised goods to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both.

Many of the Company's products sold are subject to trade discounts, rebates, coupons and right of return. Revenues are recorded net of provisions for variable consideration, including discounts, rebates, governmental rebate programs, price adjustments, returns, chargebacks, promotional programs and other sales allowances. Accruals for these provisions are presented in the unaudited interim condensed consolidated financial statements as reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). Amounts recorded for revenue deductions can result from a complex series of judgements about future events and uncertainties and can rely heavily on estimates and assumptions. The following section briefly describes the nature of the Company's provisions for variable consideration and how such provisions are estimated.

Trade Discounts and Other Sales Allowances — The Company provides trade discounts and allowances to its wholesale customers for sales order management, data, and distribution services. The Company also provides for prompt pay discounts if payment is received within the payment term days which generally range from 30 to 75 days. These discounts and allowances have been recorded as a reduction of revenue and a reduction to accounts receivables.

Product Returns — Consistent with industry practice, the Company offers customers a right to return any unused product and such right of return commences six months prior to product expiration date and ends one year after product expiration date. Products returned for expiration are reimbursed at current or contracted price less 5%. The Company estimates the amount of its product sales that may be returned by its customers and accrues this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return reserves using available industry data and its own sales information, including its visibility and estimates into the inventory remaining in the distribution channel.

Government Chargebacks — Chargebacks for fees and discounts to indirect qualified government healthcare providers represent the estimated obligations resulting from contractual commitments to sell products to qualified U.S. Department of Veterans Affairs hospitals and 340B entities at prices lower than the list prices charged to customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the statutory selling price to the qualified government entity. These allowances are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivables, net. The chargeback amount from our direct customer is are generally determined at the time of their resale to the qualified government healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of our direct customer's notification to the Company of the resale. The allowance for chargebacks is based on expected sellthrough levels by our direct customers to indirect customers, as well as estimated wholesaler inventory levels.

Government Rebates — The Company is subject to discount obligations under state Medicaid programs and Medicare. These accruals are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program. For Medicaid programs, the Company estimates the portion of sales attributed to Medicaid patients and records a liability for the rebates to be paid to the respective state Medicaid programs. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Coupons — The Company offers coupons on certain products for qualified commercially-insured parties with prescription drug co-payments. The accrual for coupons is based on an estimate of redemptions and the cost per coupon claim that the Company expects to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue.

Rebates — The Company offers managed care rebates to certain providers. The Company calculates rebate payment amounts due under this program based on actual qualifying products and applies a contractual discount rate. The accrual is based on an estimate of claims that the Company expects to receive and inventory in the distribution channel. The accrual is recognized at the time of sale, resulting in a reduction of product revenue.

Accounts Receivable

Accounts receivable consists of amounts due to the Company for product sales. The Company's accounts receivable reflects discounts for estimated early payment. Accounts receivable are stated at amounts due from customers, net of an allowance for doubtful accounts. Accounts that are outstanding longer than the contractual payment terms are considered past due. The Company determines its allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due and the customer's current ability to pay its obligation to the Company. The Company writes off accounts receivable when they become uncollectible. The allowance for doubtful accounts were $0.1 million as of June 30, 2021 and December 31, 2020.

Inventories

Inventories comprise raw materials and finished goods, which are valued at the lower of cost and net realizable value, on a first-in, first-out basis. The Company evaluates the carrying value of inventories on a regular basis, taking into account anticipated future sales compared with quantities on hand, and the remaining shelf life of goods on hand. The acquired Qbrexza finished goods inventory includes a fair value step-up of $5.7 million, which will be expensed within cost of sales, as the inventory is sold to customers. All of the step-up finished goods inventory is expected to be sold in 2021.

Property and Equipment

Computer equipment, furniture and fixtures and machinery and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful life of each asset. Leasehold improvements are amortized over the shorter of the estimated useful lives or the term of the respective leases.

Intangible Assets

Intangible assets are reported at cost, less accumulated amortization and impairments. Intangible assets with finite lives are amortized over their estimated useful lives, which represents the estimated life of the product. Amortization is calculated primarily using the straight-line method.

During the ordinary course of business, the Company has entered into certain licenses and asset purchase agreements. Potential milestone payments for achieving sales targets or regulatory development milestones are recorded when it is probable of achievement. Upon a milestone payment being achieved, the milestone payment will be capitalized and amortized over the remaining useful life for approved products and expensed for milestones prior to FDA approval. Royalty payments are recorded as cost of goods sold as sales are recognized.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including property and equipment, for impairment at least annually or whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Factors that the Company considers in deciding when to perform an impairment review include significant underperformance of the long-lived asset in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in the use of the assets. If an impairment review is performed to evaluate a long-lived asset for recoverability, the Company compares forecasts of undiscounted cash flows expected to result from the use and eventual disposition of the long-lived asset to its carrying value. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of an asset are less than its carrying amount. The impairment loss would be based on the excess of the carrying value of the impaired asset over its fair value, determined based on discounted cash flows.

Leases

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

In calculating the right-of-use asset and lease liability, the Company elects to combine lease and non-lease components.

Contingencies

The Company records accruals for contingencies and legal proceedings expected to be incurred in connection with a loss contingency when it is probable that a liability has been incurred and the amount can be reasonably estimated.

If a loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material, would be disclosed.

Stock-based Compensation

The Company expenses stock-based compensation to employees and non-employees over the requisite service period based on the estimated grant-date fair value of the awards and actual forfeitures.

The fair value of the Company's common stock underlying the stock options is also an input to the Black-Scholes option pricing model. The Company engages an independent third-party valuation firm to provide an estimate of the fair value of its common stock annually, utilizing input from management. The fair value of the Company's common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

The Company estimates the fair value of stock option grants using the Black-Scholes option pricing model, which requires the use of a number of assumptions including the fair value of the common stock, expected volatility, risk-free interest rate, expected dividends and the expected term of the option. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates

and involve inherent uncertainties and the application of management's judgment. Forfeitures are recorded as they occur. All stock-based compensation costs are recorded in selling, general and administrative ("SG&A") expense in the unaudited interim condensed consolidated statements of operations.

Research and Development Costs

Research and development costs are expensed as incurred. Advance payments for goods and services that will be used in future research and development activities are expensed when the activity has been performed or when the goods have been received rather than when the payment is made. Upfront and milestone payments due to third parties that perform research and development services on the Company's behalf will be expensed as services are rendered or when the milestone is achieved.

Research and development costs primarily consist of personnel related expenses, stock-based compensation, payments made to third parties for license and milestone costs related to in-licensed products and technology, payments made to third party contract research organizations.

In accordance with Accounting Standards Codification ("ASC") 730-10-25-1,*Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached commercial feasibility and has no alternative future use. Such licenses purchased by the Company require substantial completion of research and development, regulatory and marketing approval efforts in order to reach commercial feasibility and have no alternative future use.

Income Taxes

As of June 30, 2021 and December 31, 2020, the Company is included in the Fortress consolidated federal tax return and consolidated or combined state tax returns in multiple jurisdictions. The Company's unaudited interim condensed consolidated financial statements recognize the current and deferred income tax consequences that result from the Company's activities during the current and preceding periods pursuant to the provisions of ASC Topic 740, Income Taxes, as if the Company were a separate taxpayer rather than a member of the Fortress consolidated income tax return group. Fortress has agreed that the Company does not have to make payments to Fortress for the Company's use of net operating losses ("NOLs") of Fortress (including other Fortress group members). Since Fortress does not require the Company to pay in any form for the utilization of the consolidated group's NOLs, the tax benefit the Company realizes has been recorded as a capital contribution.

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of cumulative tax and book income incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that the Company will realize the benefits of the net deferred tax assets as of June 30, 2021 and December 31, 2020.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

For tax positions that are more likely than not of being sustained upon audit, the Company recognizes the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, the Company does not recognize any portion of the benefit. As of June 30, 2021 and December 31, 2020, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance. The Company would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded in 2021 or 2020.

Earnings Per Share

Basic net income (loss) per share of common stock is calculated by dividing net income (loss) by the weighted-average number of shares of common stock outstanding during the reporting period. Diluted earnings per share is calculated by dividing net income by the weighted-average number of shares of common stock outstanding during the reporting period after giving effect to dilutive potential common shares for stock options and restricted stock units ("RSUs"), determined using the treasury stock method. See Note 15 below.

Comprehensive Income

The Company has no components of other comprehensive income, and therefore, comprehensive income equals net income.

Recently Adopted Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12,*Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in ASC 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company adopted this standard on January 1, 2021 and its adoption did not have a material impact on the unaudited interim condensed consolidated financial statements.

NOTE 3. INVENTORY

The Company's inventory consists of the following (dollars in thousands):

	June 30, 2021	December 31, 2020
	(Unaudited)	
Raw materials	$ 4,907	$ —
Finished goods	9,408	1,404
Total Inventory	$ 14,315	$ 1,404

The acquired Qbrezxa finished goods inventory includes a fair value step-up of $5.7 million, which will be expensed within cost of sales, as the inventory is sold to customers. All of the step-up finished goods inventory is expected to be sold in 2021. For additional information on our acquisition of Qbrexza, please refer to Note 5.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 4. PROPERTY AND EQUIPMENT

The Company's property and equipment consist of the following (dollars in thousands):

	Useful Life (Years)	June 30, 2021	December 31, 2020
		(Unaudited)	
Leasehold improvements	2	$ 11	$ 11
Total property and equipment		11	11
Less: Accumulated depreciation		(11)	(11)
Property and equipment, net		$ —	$ —

Depreciation expense for the Company's property and equipment was $0 and $3,000 for the six months ended June 30, 2021 and 2020, respectively and was recorded in SG&A in the unaudited interim condensed consolidated statements of operations.

NOTE 5. INTANGIBLES

On March 31, 2021, the Company executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc. a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement, the Company acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon HSR acceptance, which was received on May 13, 2021, the Company paid the upfront fee of $12.5 million to Dermira. In addition, Dermira is eligible to receive up to $144 million in the aggregate upon the achievement of certain sales milestones. The royalty structure for the agreement is tiered with royalties for the first two years ranging from approximately 40% to 30%. Thereafter for a period of eight years royalties are approximately 12.0% to 19.0%. Royalty amounts are subject to 50% diminution in the event of loss of exclusivity due to the introduction of an authorized generic.

Upon closing of the Qbrexza® purchase, the Company became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza®. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application ("ANDA"). The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

The purchase price of $12.5 million included the asset Qbrexza as well as finished goods and raw material inventory. The Company allocated the upfront payment to inventory since the fair value of the inventory and Qbrexza rights exceeded the purchase price. The future contingent milestone payments, if achieved, will be recorded to intangible asset and amortized over the seven year life of the asset commencing on the closing date.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The table below provides a summary of the Company's intangible assets (dollars in thousands):

	Estimated Useful Life (Years)	June 30, 2021	December 31, 2020
		(Unaudited)	
Ceracade®	3	$ 300	$ 300
Luxamend®	3	50	50
Targadox®	3	1,250	1,250
Ximino®	7	7,134	7,134
Exelderm®	3	1,600	1,600
Accutane	5	4,727	4,727
Anti-itch product(1)	3	3,942	3,945
Total		19,003	19,006
Accumulated amortization		(5,302)	(3,977)
Net intangible assets		$ 13,701	$ 15,029

(1) As of June 30, 2021, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the six months ended June 30, 2021. Commercial launch of this product is expected in the third quarter of 2021.

Amortization expense for the Company's intangible assets for the six months ended June 30, 2021 and 2020 was $1.3 million and $0.7 million, respectively, and was recorded in cost of goods sold in the consolidated statements of operations.

The future amortization of these intangible assets for the years ending is as follows (dollars in thousands):

	Ximino®	Exelderm®	Accutane®	Total Amortization
Six Months Ended December 31, 2021	$ 509	$ 167	$ 473	$ 1,149
December 31, 2022	1,019	—	946	1,965
December 31, 2023	1,019	—	945	1,964
December 31, 2024	1,019	—	946	1,965
December 31, 2025	1,019	—	945	1,964
Thereafter	595	—	157	752
Sub-total	$ 5,180	$ 167	$ 4,412	$ 9,759
Asset not yet placed in service				3,942
Total	$ 5,180	$ 167	$ 4,412	$ 13,701

NOTE 6. LICENSES ACQUIRED

On June 29, 2021, the Company entered a license, collaboration, and assignment agreement (the "DFD Agreement") to obtain the global rights for the development and commercialization of a late-stage development modified release oral minocycline for the treatment of rosacea ("DFD-29") with Dr. Reddy's Laboratories, Ltd ("DRL"). Pursuant to the terms and conditions of the DFD-29 Agreement, the Company agreed to pay $10.0 million, of which $2.0 million (the "First Installment") was paid upon execution and $8.0 million (the "Second Installment") is payable 90 days following June 29, 2021. Additional contingent regulatory and commercial milestone payments totaling up to $163.0 million are also payable. Royalties ranging from approximately 10% to approximately 15% are payable on net sales of the DFD-29 product.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

In accordance with ASC 730-10-25-1,*Research and Development*, costs incurred in obtaining technology licenses are charged to research and development expense if the technology licensed has not reached technological feasibility and has no alternative future use. The licenses purchased by the Company require substantial completion of research and development, and regulatory and marketing approval efforts in order to reach technological feasibility. As such, the $10.0 million for the three and six months ended June 30, 2021 for the purchase price of licenses acquired were classified as research and development-licenses acquired in the condensed consolidated statement of operations.

Additionally, the Company is required to fund and oversee the Phase III clinical trials approximating $24.0 million, based upon the current development plan and budget. DRL may terminate the DFD Agreement in the event that the Company fails to make the Second Installment payment, in which case DRL's sole remedy under the DFD Agreement would be the non-refundable First Installment payment of $2.0 million.

The DFD Agreement also includes contingent payments to be made to DRL in the event of an Initial Public Offering ("IPO") of the Company or sale of the Company, See Note 7.

NOTE 7: FAIR VALUE MEASUREMENTS

Certain of the Company's financial instruments are not measured at fair value on a recurring basis but are recorded at amounts that approximate their fair value due to their liquid or short-term nature, such as accounts payable, accrued expenses and other current liabilities.

Placement Agent Warrants

In connection with the Company's Class A Preferred Stock offering (see Note 15), the Company will issue upon a Qualified Financing (an external financing of $25.0 million or greater) to the placement agent warrants ("the Placement Agent Warrants") to purchase 5% of the shares of common stock into which the Class A Preferred Stock converts. The Placement Agent Warrants have a term of 5 years at an exercise price at a 15% discount to the financing price. The Company valued the Placement Agent Warrants using a Monte Carlo simulation valuation methodology. A summary of the weighted average (in aggregate) significant unobservable inputs (Level 3 inputs) used in measuring the Company's warrant liability that are categorized within Level 3 of the fair value hierarchy as of June 30, 2021 was as follows:

	June 30, 2021
Risk-free interest rate	0.87%
Expected dividend yield	—
Expected term in years	1.3
Expected volatility	50%

At June 30, 2021, the value of the Placement Agent Warrants was $0.5 million.

Contingent Payment Derivative

In connection with the DFD Agreement, the Company agreed to pay DRL additional consideration upon either an initial public offering of the Company's common stock ("IPO") or an acquisition of the Company, the agreement further specifies that only one payment can be made. The contingent payment associated with an IPO of the Company's common stock, is deemed to be achieved if upon the completion of an IPO the Company's market capitalization on a fully diluted basis is $150 million or greater at the close of business on the date of such IPO. The payment due for the achievement of the IPO criteria is a follows: (a) issue to DRL a number of shares of the Company's common stock equal to $5.0 million as calculated using a fifteen (15) day volume weighted average price of the Company's closing price, measured fifteen (15) days following the IPO; or (b) make a cash payment to DRL equal to $5.0 million.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

In the event the IPO contingency is not satisfied, and the Company or its affiliate executes a definitive agreement for an acquisition event during the period beginning on June 29, 2021 and ending twenty-four (24) months after the regulatory approval of DFD-29, the Company shall pay to DRL: (a) 20% of the value of DFD-29 attributable to the acquisition event, if such acquisition event occurs between closing and New Drug Application ("NDA") approval; or (b) 12% of the value of DFD-29 attributable to the acquisition event, if such acquisition event occurs within 24 months after NDA approval.

The Company valued the contingent payment discussed above utilizing a Probability Weighted Expected Return Method (PWERM) model. A summary of the weighted average (in aggregate) significant unobservable inputs (Level 3 inputs) used in measuring the Company's derivative liability that are categorized within Level 3 of the fair value hierarchy as of June 30, 2021 were as follows:

	June 30, 2021
Discount rate	30%
Expected dividend yield	—
Expected term	3 months to 5 years

At June 30, 2021 the value of the contingent payment derivative is $3.7 million, and was recorded on the condensed consolidated balance sheet. No liability was recorded at December 31, 2020.

The following table classifies into the fair value hierarchy of the Company's financial instruments, measured at fair value as of June 30, 2021:

	Fair Value Measurement as of June 30, 2021			
	Level 1	Level 2	Level 3	Total
Liabilities				
Derivative warrant liability	$ —		$ 4,287	$ 4,287
Total	$ —	$ —	$ 4,287	$ 4,287

The table below provides a roll-forward of the changes in fair value of Level 3 financial instruments as of June 30, 2021:

	Warrant Liability
Balance at December 31, 2020	$ —
Additions:	
Contingent payment warrant	3,743
Placement agent warrant	362
Change in fair value of warrant liability	182
Balance at June 30, 2021 (Unaudited)	$ 4,287

During the six month period ended June 30, 2021, no transfers occurred between Level 1, Level 2, and Level 3 instruments.

NOTE 8. RELATED PARTY AGREEMENTS

In the normal course of business, the Company reimburses Fortress for various payroll related costs and general and administrative costs. As of June 30, 2021 and December 31, 2020, the Company had a balance of approximately $0.3 million and $0.1 million, respectively recorded as accounts payable — related party on the consolidated balance sheets.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Fortress Note

Since the Company's inception in October 2014, Fortress has funded the Company's operations through a working capital loan pursuant to the terms of a future advance promissory note (the "Fortress Note"). The Fortress Note matures on or before December 31, 2024.

As of both June 30, 2021 and December 31, 2020, the Company had an outstanding balance of approximately $5.2 million under this related party note, which is recorded as a long-term note payable — related party on the consolidated balance sheets. This is an interest-free note.

Fortress Income Tax

As of June 30, 2021, the Company is 93% owned by Fortress and has been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. In connection with the filing of the consolidated tax return, the Company's tax liabilities for the year ended December 31, 2020 of $1.9 million was satisfied utilizing NOLs generated by Fortress. Extinguishment of these liabilities to Fortress was recorded on the Company's consolidated balance sheets as a contribution of capital.

Additionally, see Note 17 below for a discussion of income taxes.

Allocated Parent Cost

Certain parent costs associated with the activities of the Company have been allocated. The expense allocations to Journey are employee and stock-based compensation for finance and accounting service provided to the Company based on time spent on Journey projects. The allocations were based on assumptions that management believes are reasonable. For the three months ended June 30, 2021 and 2020, the allocated expenses were approximately $0.1 million and $ nil, respectively, and were recorded to general and administration expenses. For the six months ended June 30, 2021 and 2020, the allocated expenses were approximately $0.2 million and $ nil, respectively, and were recorded to general and administration expenses. This amount due to parent is recorded in accrued expenses, related party.

NOTE 9. ACCRUED EXPENSES

Accrued expenses consisted of the following (dollars in thousands):

	June 30, 2021	December 31, 2020
	(Unaudited)	
Accrued expenses:		
Accrued employee compensation	$ 1,948	$ 2,041
Research and development – license fees	8,000	—
Accrued royalties payable	3,340	2,682
Accrued coupons and rebates	18,609	12,869
Return reserve	2,099	2,580
Other	1,368	1,326
Total accrued expenses	$ 35,364	$ 21,498

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 10. INSTALLMENT PAYMENTS — LICENSES

Installment payment — licenses consist of the following (dollars in thousands):

	June 30, 2021			
	Ximino[1]	Accutane[2]	Anti-Itch Product[3]	Total
Installment payments – licenses, short-term	$ 2,000	$ 1,000	$ 1,500	$ 4,500
Less: imputed interest	(517)	(101)	(21)	(639)
Sub-total installment payments – licenses, short-term	1,483	899	1,479	3,861
Installment payments – licenses, long-term	5,000	2,000	—	7,000
Less: imputed interest	(519)	(46)	—	(565)
Sub-total installment payments – licenses, long-term	4,481	1,954	—	6,435
Total installment payments – licenses	$ 5,964	$ 2,853	$ 1,479	$10,296

	December 31, 2020			
	Ximino[1]	Accutane[2]	Anti-Itch Product[3]	Total
Installment payments – licenses, short-term	$ 2,000	$ 500	$ 2,800	$ 5,300
Less: imputed interest	(602)	(122)	(54)	(778)
Sub-total installment payments – licenses, short-term	1,398	378	2,746	4,522
Installment payments – licenses, long-term	5,000	3,000	1,000	9,000
Less: imputed interest	(775)	(88)	—	(863)
Sub-total installment payments – licenses, long-term	4,225	2,912	1,000	8,137
Total installment payments – licenses	$ 5,623	$ 3,290	$ 3,746	$12,659

Note 1: Imputed interest rate of 11.96% and maturity date of July 22, 2024.

Note 2: Imputed interest rate of 4.03% and maturity date of July 29, 2023.

Note 3: Imputed interest rate of 4.25% and maturity date of January 1, 2022.

The future amortization of the discount for notes payable for the years ending is as follows (dollars in thousands):

	Principal	Imputed Interest	Total Notes Payable
Six Months Ended December 31, 2021	$ 2,500	$ (341)	$ 2,159
December 31, 2022	5,000	(490)	4,510
December 31, 2023	2,500	(276)	2,224
December 31, 2024	1,500	(97)	1,403
Total	$11,500	$(1,204)	$ 10,296

NOTE 11. OPERATING LEASE OBLIGATIONS

The Company leases 3,681 square feet of office space in Scottsdale, Arizona. In August 2020, the Company amended its office lease and extended the lease term for an additional 25 months at an annual rate of approximately $0.1 million.The term of the amended lease commenced on December 1, 2020 and will expire on December 31, 2022.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The Company recorded rent expense as follows (dollars in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Lease cost				
Operating lease cost	$ 21	$ 24	$ 44	$ 47
Variable lease cost	1	—	2	—
Total lease cost	$ 22	$ 24	$ 46	$ 47

The following table summarizes quantitative information about the Company's operating leases (dollars in thousands):

	Six Months Ended June 30,	
	2021	2020
Operating cash flows from operating leases	$ 44	$ 47
Weighted-average remaining lease term – operating leases	1.2	0.5
Weighted-average discount rate – operating leases	4.0%	6.0%

As of June 30, 2021, future minimum lease payments under lease agreements associated with the Company's operations were as follows (dollars in thousands):

	Future Lease Liability
Six Months Ended December 31, 2021	$ 48
Year Ended December 31, 2022	100
Total	148
Less: present value discount	(5)
Operating lease liabilities	$ 143

NOTE 12. LINES OF CREDIT

East West Bank Working Capital Line of Credit

On March 31, 2021, the Company entered into an agreement with East West Bank ("EWB") in which EWB agreed to provide a $7.5 million working capital line of credit. The line of credit is secured by the Company's receivables and cash. Interest on the line is the greater of 4.25% or the Prime Rate plus 1%. The agreement matures in 36 months. There have been no amounts drawn upon this line of credit during the three or six months ended June 30, 2021.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 13. INTERST EXPENSE AND FINANCING FEES

Interest expense and financing fees for the periods consisted of the following (dollars in thousands):

	Six Months Ended June 30,					
	2021			2020		
($ in thousands)	Interest	Fees	Total	Interest	Fees	Total
Convertible preferred shares	—	270	270	—	—	—
Conversion premium	584	—	584	—	—	—
Interest payable on convertible preferred shares	263	—	263	—	—	—
Installment payments – licenses	441	—	441	305	—	305
EWB Fees	5	—	5	—	—	—
Total Interest Expense and Financing Fee	$1,293	$270	$1,563	$ 305	$ —	$305

	Three Months Ended June 30,					
	2021			2020		
($ in thousands)	Interest	Fees	Total	Interest	Fees	Total
Convertible preferred shares	—	270	270	—	—	—
Conversion premium	584	—	584	—	—	—
Interest payable on convertible preferred shares	263	—	263	—	—	—
Installment payments – licenses	220	—	220	155	—	155
EWB Fees	5	—	5	—	—	—
Total Interest Expense and Financing Fee	$1,072	$270	$1,342	$ 155	$ —	$155

The conversion premium relates to the 15% discount at which the Class A Preferred Stock converts, see Note 15. In accordance with the measurement and recognition guidance of ASC 835-30 *Imputation of Interest,* the Company will accrete the convertible preferred share settled notes to the estimated settlement amount of $14.7 million.

NOTE 14. COMMITMENTS AND CONTINGENCIES

License Agreements

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of drug products and candidates. In addition, the Company shall pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. For additional information on future milestone payments and royalties, see Note 5.

NOTE 15. STOCKHOLDERS' EQUITY AND CLASS A PREFERRED STOCK

Common Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 50,000,000 shares of $0.0001 par value Common Stock of which 6,000,000 shares are designated and authorized as Class A Common Stock.

Voting Rights

Each holder of Common Stock is entitled to one vote per share of Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors. The Company's Certificate of Incorporation and bylaws do not provide for cumulative voting rights.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Each holder of Class A Common Stock is entitled to a number of votes that is equal to 1.1 times a fraction, the numerator of which is the sum of the shares of outstanding Common Stock including the Class A Common Stock and the denominator of which is the number of outstanding shares of Class A Common Stock. Thus, the Class A Common Stock will at all times constitute a voting majority.

Dividends

The holders of the Company's outstanding shares of Common Stock and Class A Common Stock are entitled to receive dividends, if any, as may be declared from time to time by the Company's Board of Directors out of legally available funds.

Liquidation

In the event of the Company's liquidation, dissolution or winding up, holders of Common Stock and Class A Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of the Company's debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of Preferred Stock.

Rights and Preference

Holders of the Company's Common Stock and Class A Common Stock have no preemptive, conversion or subscription rights, and there is no redemption or sinking fund provisions applicable to either the Common Stock or the Class A Common Stock. The rights, preferences and privileges of the holders of Common Stock and Class A Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of the Company's Preferred Stock that are or may be issued.

8% Cumulative Convertible Class A Preferred Offering

In March 2021, the Company commenced an offering of 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Offering") in an aggregate minimum amount of $12.5 million and an aggregate maximum amount of $30.0 million. The Class A Preferred Offering terminated on July 18, 2021. The Class A Preferred Stock automatically converts into the Company's Common Stock upon a sale of the Company or a financing in an amount of at least $25.0 million within a year of the closing date of the Class A Preferred Offering (extendable by another six months at the Company's option) at a discount of 15% to the per share qualified stock price. In the event that neither a sale of the Company nor a $25.0 million financing is completed, the Class A Preferred Stock will be exchanged for shares of Fortress common stock, at a 7.5% discount to the average Fortress common stock trading price over the 10-day period preceding such exchange.

The Company evaluated the terms of the Class A Preferred Offering under ASC 480, *Distinguishing Liabilities from Equity*, and determined the instrument met the criteria to be recorded as a liability. The value at conversion does not vary with the value of Journey's common shares, therefore the settlement provision would not be considered a conversion feature. Accordingly, the Company determined liability classification is appropriate and as such, this instrument is accounted for as a liability on the Company's condensed consolidated balance sheet.

Dividends on the Class A Preferred Stock will be paid quarterly in shares of Fortress common stock based upon a 7.5% discount to the average trading price over the 10-day period preceding the dividend payment date As consideration for the foregoing, the Company will issue to Fortress additional shares of common stock, debt securities, or a combination of the two for the amount of such dividend. At June 30, 2021, the Company recorded $0.3 million representing the dividend payable on June 30, 2021 to the Class A Preferred Stock shareholders. This amount is recorded in accrued expenses, related party.

The Company has completed five closings in connection with the Class A Preferred Offering ("Closings"). In connection with the Closings, the Company issued an aggregate of 758,680 Class A

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Preferred shares at a price of $25.00 per share, for gross proceeds of $19.0 million. Following the payment of placement agent fees of $1.9 million, and other expenses of $0.1 million, the Company received $17.0 million of net proceeds.

For the period ended June 30, 2021, the Company raised $14.3 million in gross proceeds and received net proceeds $12.6 million. Cash fees paid were comprised of the following: $1.4 million in placement agent fees and $0.3 million in legal and administrative fees. Non-cash fees were the initial fair value of the contingent placement agent warrant of $0.4 million. The fees were recorded to debt discount on the unaudited interim condensed consolidated balance sheet at June 30, 2021.

Stock Options

In 2015, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical 2015 Stock Plan (the "Plan") authorizing the Company to grant up to 3,000,000 shares of common stock to eligible employees, directors, and consultants in the form of restricted stock, stock options and other types of grants. In August 2020, the Company's Board of Directors approved an increase to the shares available for issuance under the Plan by 642,857 shares. The amount, terms, and exercisability provisions of grants are determined by the Board of Directors. As of June 30, 2021 and December 31, 2020, 146,666 and 34,000 shares, respectively, were available for issuance under the Plan.

The following table summarizes the Company's stock option activities:

	Number of shares	Weighted average exercise price	Total weighted average intrinsic value	Weighted average remaining contractual life (years)
Outstanding options at December 31, 2020	2,142,000	$ 0.80	$ 7,934,320	5.72
Exercised	(10,000)	0.68		
Forfeited	(17,666)	1.36		
Outstanding options at June 30, 2021	2,114,334	$ 0.79	$ 7,840,679	5.20
Options vested and exercisable	1,978,416	$ 0.75	$ 7,415,011	5.02

During the six months ended June 30, 2021, exercises of stock options resulted in total proceeds of approximately $7,000. For the three months ended June 30, 2021 and 2020, the Company recognized approximately $11,000 and $0.2 million, respectively, of stock-based compensation expense related to options which was recorded in SG&A in the unaudited interim condensed consolidated statements of operations. For the six months ended June 30, 2021 and 2020, the Company recognized approximately $33,000 and $0.1 million, respectively of stock-based compensation expense related to options which was recorded in SG&A in the unaudited interim condensed consolidated statements of operations.

As of June 30, 2021, the Company had unrecognized stock-based compensation expense related to all unvested options of $47,000, which the Company expects to recognize over a weighted-average period of approximately 1.2 years.

Restricted Stock Units

The following table summarizes the Company's restricted stock activities:

	Number of units	Weighted average exercise price
Unvested balance at December 31, 2020	815,524	$ 3.37
Forfeited	(95,000)	3.37

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

	Number of units	Weighted average exercise price
Unvested balance at June 30, 2021	720,524	$ 3.37

The unvested RSUs vest contingent upon a change of control, sale of the Company or an initial public offering event occurring within five years of the grant date. As of June 30, 2021, no stock-based compensation expense has been recorded related to these grants. Stock-based compensation expense for these awards in the amount of $2.4 million, the fair value as calculated on the grant date, will be recorded if and when it becomes probable that one of the contingent vesting events will be achieved.

NOTE 16. REVENUES FROM CONTRACTS AND SIGNIFICANT CUSTOMERS

Disaggregation of Net Revenues

The Company has the following marketed products, Qbrexa®, Accutane®, Targadox®, Ximino®, Exelderm®, Luxamend® and Ceracade®. Substantially all of the Company's product revenues are recorded in the U.S. Revenues by product are summarized as follows (dollars in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2021	2020	2021	2020
Targadox®	$ 5,727	$ 6,514	$12,926	$14,981
Ximino®	1,312	2,074	3,413	4,823
Exelderm®	1,736	864	2,953	1,687
Accutane®	1,945	—	2,141	—
Qbrexa®	4,568	—	4,568	—
Other branded revenue	—	(37)	6	(130)
Total product revenues	$ 15,288	$ 9,415	$26,007	$21,361

Significant Customers

For the six months ended June 30, 2021, none of the Company's customers accounted for more than 10% of its total gross product revenue.

As of June 30, 2021, one of the Company's customers accounted for 14% of its total accounts receivable balance.

NOTE 17. INCOME TAXES

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if Management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of cumulative tax and book income incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that the Company will realize the benefits of the net deferred tax assets as of June 30, 2021 and 2020.

For the six months ended June 30, 2021 and 2020, income tax expense or (benefit) was ($3.3 million) and $0.9 million, respectively, resulting in an effective income tax rate of 22.3% and 25.2%, respectively. The change in effective tax rate is due to changes in unfavorable permanent book tax differences.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

For tax positions that are more likely than not of being sustained upon audit, the Company recognizes the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, the Company does not recognize any portion of the benefit. As of June 30, 2021, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance. The Company would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded through June 30, 2021.

JOURNEY MEDICAL CORPORATION

NOTES TO UNAUDITED INTERIM CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 18. NET INCOME PER COMMON SHARE

The Company's common stock equivalents, including unvested restricted stock and options have been excluded from the computation of diluted loss per share for the three and six months ended June 30, 2021 as the effect would be to reduce the loss per share. Therefore, the weighted average common stock outstanding used to calculate both basic and diluted income loss per share is the same for the three and six months ended June 30, 2021.

The following shares of potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding, as the effect of including such securities would be anti-dilutive for the three and six months ended June 30, 2021:

	For the Three and Six Months Ended June 30, 2021
Unvested restricted stock units/awards	720,524
Unvested Options	2,114,334
Total potential dilutive effect	2,834,858

The following is a reconciliation of the numerator and denominator of the diluted net income per share computations for the periods presented below (in thousands except for share and per share amounts):

	Three Months Ended June 30, 2020	Six Months Ended June 30, 2020
Net income	$ 455	$ 2,752
Weighted average shares outstanding – basic	9,133,333	9,133,333
Stock options	1,699,657	1,692,946
Weighted average shares outstanding – diluted	10,832,990	10,826,279
Per share data:		
Basic	$ 0.05	$ 0.30
Diluted	$ 0.04	$ 0.25

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors
Journey Medical Corporation:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Journey Medical Corporation (and subsidiary) (the Company) as of December 31, 2020 and 2019, the related consolidated statements of operations, changes in stockholders' equity (deficit), and cash flows for each of the years then ended, and the related notes (collectively, the consolidated financial statements).In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the years then ended, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB)and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB and in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ KPMG LLP

We have served as the Company's auditor since 2021.

Short Hills, New Jersey
July 21, 2021

JOURNEY MEDICAL CORPORATION

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31,	
	2020	**2019**
ASSETS		
Current assets		
Cash	$ 8,246	$ 4,801
Accounts receivable, net of reserves	23,928	18,955
Inventory	1,404	857
Prepaid expenses and other current assets	1,664	655
Total current assets	35,242	25,268
Long-term assets		
Property and equipment, net	—	5
Intangible assets, net	15,029	7,377
Operating lease right-of-use asset, net	175	84
Deferred tax assets	1,454	1,119
Other assets	6	6
Total long-term assets	16,664	8,591
Total assets	**$51,906**	**$33,859**
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities		
Accounts payable	$ 1,839	$ 2,043
Accounts payable, related party	117	65
Accrued expenses	21,498	18,706
Installment payments – licenses, short-term (net of debt discount of $778 and nil as of December 31, 2020 and December 31, 2019, respectively)	4,522	—
Operating lease liabilities, short-term	85	83
Total current liabilities	28,061	20,897
Income tax payable	99	—
Note payable, related party	5,220	5,220
Installment payments – licenses, long-term (net of debt discount of $863 and $2,010 as of December 31, 2020 and December 31, 2019, respectively)	8,137	4,990
Operating lease liabilities, long-term	97	—
Total liabilities	**41,614**	**31,107**
Commitments and contingencies (Note 10)		
Stockholders' equity		
Common stock, $.0001 par value, 50,000,000 shares authorized		
Common stock, 3,151,333 and 3,133,333 shares issued and outstanding as of December 31, 2020 and December 31, 2019, respectively	—	—
Common stock – Class A, 6,000,000 shares issued and outstanding as of December 31, 2020 and December 31, 2019	1	1
Additional paid-in capital	5,171	2,914
Retained earnings (accumulated deficit)	5,120	(163)
Total stockholders' equity	**10,292**	**2,752**
Total liabilities and stockholders' equity	**$51,906**	**$33,859**

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

JOURNEY MEDICAL CORPORATION

CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share data)

	For the Years Ended December 31,	
	2020	2019
Product revenue, net	$ 44,531	$ 34,921
Operating expenses		
Cost of goods sold – product revenue	14,594	10,532
Selling, general and administrative	22,086	19,130
Total operating expenses	36,680	29,662
Income from operations	7,851	5,259
Other expense		
Interest expense	698	255
Total other expense	698	255
Income before income taxes	7,153	5,004
Income tax expense	1,870	1,379
Net income	**$ 5,283**	**$ 3,625**
Net income per common share – basic	$ 0.58	$ 0.40
Net income per common share – diluted	$ 0.49	$ 0.36
Weighted average shares outstanding – basic	9,135,985	9,133,333
Weighted average shares outstanding – diluted	10,836,122	10,075,804

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

JOURNEY MEDICAL CORPORATION

CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except share data)

	Common Stock		Common Stock A		Additional Paid-in Capital	Retained Earnings (Accumulated Deficit)	Total Shareholders' Equity (Deficit)
	Shares	Amount	Shares	Amount			
Balance as of January 1, 2019	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 1,491**	**$ (3,788)**	**$ (2,296)**
Stock-based compensation	—	—	—	—	240	—	240
Contribution of capital – extinguishment of related party payable	—	—	—	—	1,183	—	1,183
Net income	—	—	—	—	—	3,625	3,625
Balance as of December 31, 2019	**3,133,333**	**$ —**	**6,000,000**	**$ 1**	**$ 2,914**	**$ (163)**	**$ 2,752**
Stock-based compensation	—	—	—	—	153	—	153
Exercise of options for cash	18,000	—	—	—	13	—	13
Contribution of capital – extinguishment of related party payable	—	—	—	—	2,091	—	2,091
Net income	—	—	—	—	—	5,283	5,283
Balance as of December 31, 2020	**3,151,333**	**$ —**	**6,000,000**	**$ 1**	**$ 5,171**	**$ 5,120**	**$ 10,292**

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

JOURNEY MEDICAL CORPORATION

CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	For the Years Ended December 31,	
	2020	**2019**
Cash flows from operating activities		
Net income	$ 5,283	$ 3,625
Adjustments to reconcile net loss to net income provided by operating activities:		
Depreciation expense	5	5
Bad debt expense	49	100
Non-cash interest expense	698	255
Amortization of license fee	1,420	1,174
Amortization of operating lease right-of-use assets	91	85
Stock-based compensation	153	240
Deferred income taxes	(335)	69
Changes in operating assets and liabilities:		
Accounts receivable	(5,022)	(10,492)
Inventory	(547)	(179)
Prepaid expenses and other current assets	(1,009)	404
Accounts payable	(204)	1,083
Accounts payable, related party	52	65
Accrued expenses	2,390	11,651
Income tax payable	2,191	1,019
Lease liabilities	(83)	(86)
Net cash provided by operating activities	5,132	9,018
Cash flows from investing activities		
Purchase of intangible assets	(1,200)	(2,400)
Net cash used in investing activities	(1,200)	(2,400)
Cash flows from financing activities		
Proceeds from the exercise of options	13	—
Payment of license note payable	(500)	—
Payment of Fortress Note	—	(4,000)
Proceeds from Fortress Note	—	449
Net cash used in financing activities	(487)	(3,551)
Net increase in cash	3,445	3,067
Cash at the beginning of the period	4,801	1,734
Cash at the end of the period	**$ 8,246**	**$ 4,801**
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 110	$ 192
Supplemental disclosure of non-cash financing and investing activities:		
Note payable for intangible asset acquisition	$ 7,872	$ 4,734
Contribution capital – extinguishment of related party payable	$ 2,091	$ 1,183

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

JOURNEY MEDICAL CORPORATION
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1. ORGANIZATION AND PLAN OF BUSINESS OPERATIONS

Journey Medical Corporation was formed on July 18, 2014. The Company is a commercial-stage pharmaceutical company that focuses on the development and commercialization of pharmaceutical products for the treatment of dermatological conditions. The current product portfolio includes five branded and three authorized generic prescription drugs for dermatological conditions that are marketed in the U.S. The Company acquires rights to future products by licensing or otherwise acquiring an ownership interest in, funding the research and development of, and eventually commercializing, the products through their exclusive field sales organization.

As of December 31, 2020 and 2019, the Company is a majority-owned subsidiary of Fortress Biotech, Inc. ("Fortress" or "Parent").

Liquidity and Capital Resources

Since inception, the Company's operations have been financed primarily through a working capital note from Fortress and cash received from customers. For the next twelve months from the issuance of these consolidated financial statements the Company will be able to fund its operations through operating activities, proceeds from the Company's 8% Cumulative Convertible Class A Preferred Offering, from which the Company has received gross proceeds of $14.3 million, as well as potential utilization of the Company's East West Bank Working Line of Credit of $7.5 million, see Note 15.

The Company regularly evaluates market conditions, its liquidity profile, and various financing alternatives for opportunities to enhance its capital structure. If opportunities are favorable, the Company may seek to raise capital through debt or equity financings to expand its product portfolio. If such funding is not available or not available on terms acceptable to the Company, the Company's current plans for expansion of its product portfolio will be curtailed.

In addition to the foregoing, the Company does not expect any material impact on its revenue levels and its liquidity due to the worldwide spread of COVID-19. However, the Company is continuing to assess the impact the spread of COVID-19 may have on its future revenue streams and operations.

NOTE 2. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation and Principles of Consolidation

The Company's consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP"). The Company's consolidated financial statements include the accounts of the Company and the accounts of the Company's wholly-owned subsidiary, JG Pharma, Inc. ("JG" or "JG Pharma"). All intercompany balances and transactions have been eliminated.

Emerging Growth Company

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB"), or other standard setting bodies and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's consolidated financial statements upon adoption. Under the Jumpstart Our Business Startups Act of 2012, as amended, the Company upon completion of a public offering would meet the definition of an emerging growth company and would elect the extended transition period for complying with new or revised accounting standards, which delays the adoption of these accounting standards until they would apply to private companies.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of expenses during the reporting period. Significant estimates made by management include provisions for product returns, coupons, rebates, chargebacks, discounts, allowances and distribution fees paid to certain wholesalers and useful lives of amortizable intangible assets. Actual results may differ materially and adversely from these estimates. To the extent there are material differences between the estimates and actual results, the Company's future results of operations will be affected.

Segment Information

Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one segment.

Cash

The Company considers highly liquid investments with a maturity of three months or less when purchased to be cash equivalents. Cash at December 31, 2020 and 2019 consisted entirely of cash in institutions in the United States. Balances at certain institutions have exceeded Federal Deposit Insurance Corporation insured limits.

Concentrations of Credit Risk

Financial instruments that potentially subject the Company to significant concentration of credit risk consist primarily of cash. Periodically, the Company may maintain deposits in financial institutions in excess of government insured limits. Management believes that the Company is not exposed to significant credit risk as the Company's deposits are held at financial institutions that management believes to be of high credit quality. The Company has not experienced any losses on these deposits.

The Company's accounts receivable primarily represent amounts due from drug wholesalers and specialty pharmacies in the United States. The Company performs periodic credit evaluations of customers and does not require collateral. An allowance for doubtful accounts is maintained for potential credit losses based on the aging of accounts receivable, historical bad debts experience, and the customer's current ability to pay its obligations to the Company. Accounts receivables balances are written off against the allowance when it is probable that the receivable will not be collected. See Note 12 for significant customers.

Revenue Recognition

The Company records revenue in accordance with the provisions of Accounting Standards Codification ("ASC") Topic 606, *Revenue from Contracts with Customers* ("ASC 606"). The core principle of this revenue standard is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. Our revenues primarily result from contracts with customers, which are generally short-term and have a single performance obligation — the delivery of product. The Company's performance obligation to deliver products is satisfied at the point in time that the goods are received by the customer, which is when the customer obtains title to and has the risks and rewards of ownership of the products. The transaction price is the amount of consideration to which the Company expects to be entitled in exchange for transferring promised goods to a customer. The consideration promised in a contract with a customer may include fixed amounts, variable amounts, or both.

Many of the Company's products sold are subject to trade discounts, rebates, coupons and right of return. Revenues are recorded net of provisions for variable consideration, including discounts, rebates, governmental rebate programs, price adjustments, returns, chargebacks, promotional programs and other sales allowances. Accruals for these provisions are presented in the consolidated financial statements as

reductions in determining net sales and as a contra asset in accounts receivable, net (if settled via credit) and other current liabilities (if paid in cash). Amounts recorded for revenue deductions can result from a complex series of judgements about future events and uncertainties and can rely heavily on estimates and assumptions. The following section briefly describes the nature of the Company's provisions for variable consideration and how such provisions are estimated.

Trade Discounts and Other Sales Allowances — The Company provides trade discounts and allowances to its wholesale customers for sales order management, data, and distribution services. The Company also provides for prompt pay discounts if payment is received within the payment term days which generally range from 30 to 75 days. These discounts and allowances have been recorded as a reduction of revenue and a reduction to accounts receivables.

Product Returns — Consistent with industry practice, the Company offers customers a right to return any unused product and such right of return commences six months prior to product expiration date and ends one year after product expiration date. Products returned for expiration are reimbursed at current or contracted price less 5%. The Company estimates the amount of its product sales that may be returned by its customers and accrues this estimate as a reduction of revenue in the period the related product revenue is recognized. The Company currently estimates product return reserves using available industry data and its own sales information, including its visibility and estimates into the inventory remaining in the distribution channel.

Government Chargebacks — Chargebacks for fees and discounts to indirect qualified government healthcare providers represent the estimated obligations resulting from contractual commitments to sell products to qualified U.S. Department of Veterans Affairs hospitals and 340B entities at prices lower than the list prices charged to customers who directly purchase the product from the Company. Customers charge the Company for the difference between what they pay for the product and the statutory selling price to the qualified government entity. These allowances are established in the same period that the related revenue is recognized, resulting in a reduction of product revenue and accounts receivables, net. The chargeback amount from our direct customer is are generally determined at the time of their resale to the qualified government healthcare provider by customers, and the Company generally issues credits for such amounts within a few weeks of our direct customer's notification to the Company of the resale. The allowance for chargebacks is based on expected sellthrough levels by our direct customers to indirect customers, as well as estimated wholesaler inventory levels.

Government Rebates — The Company is subject to discount obligations under state Medicaid programs and Medicare. These accruals are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue. For Medicare, the Company also estimates the number of patients in the prescription drug coverage gap for whom the Company will owe an additional liability under the Medicare Part D program. For Medicaid programs, the Company estimates the portion of sales attributed to Medicaid patients and records a liability for the rebates to be paid to the respective state Medicaid programs. The Company's liability for these rebates consists of invoices received for claims from prior quarters that have not been paid or for which an invoice has not yet been received, estimates of claims for the current quarter, and estimated future claims that will be made for product that has been recognized as revenue, but which remains in the distribution channel inventories at the end of each reporting period.

Coupons — The Company offers coupons on certain products for qualified commercially-insured parties with prescription drug co-payments. The accrual for coupons is based on an estimate of redemptions and the cost per coupon claim that the Company expects to receive associated with product that has been recognized as revenue, but remains in the distribution channel inventories at the end of each reporting period. The adjustments are recorded in the same period the related revenue is recognized, resulting in a reduction of product revenue.

Rebates — The Company offers managed care rebates to certain providers. The Company calculates rebate payment amounts due under this program based on actual qualifying products and applies a contractual discount rate. The accrual is based on an estimate of claims that the Company expects to receive and inventory in the distribution channel. The accrual is recognized at the time of sale, resulting in a reduction of product revenue

Accounts Receivable

Accounts receivable consists of amounts due to the Company for product sales. The Company's accounts receivable reflects discounts for estimated early payment. Accounts receivable are stated at amounts due from customers, net of an allowance for doubtful accounts. Accounts that are outstanding longer than the contractual payment terms are considered past due. The Company determines its allowance for doubtful accounts by considering a number of factors, including the length of time trade accounts receivable are past due and the customer's current ability to pay its obligation to the Company. The Company writes off accounts receivable when they become uncollectible. The allowance for doubtful accounts were $0.1 million as of both December 31, 2020 and 2019.

Inventories

Inventories comprise finished goods, which are valued at the lower of cost and net realizable value, on a first-in, first-out basis. The Company evaluates the carrying value of inventories on a regular basis, taking into account anticipated future sales compared with quantities on hand, and the remaining shelf life of goods on hand.

Property and Equipment

Computer equipment, furniture and fixtures and machinery and equipment are recorded at cost and depreciated using the straight-line method over the estimated useful life of each asset. Leasehold improvements are amortized over the shorter of the estimated useful lives or the term of the respective leases.

Intangible Assets

Intangible assets are reported at cost, less accumulated amortization and impairments. Intangible assets with finite lives are amortized over their estimated useful lives, which represents the estimated life of the product. Amortization is calculated primarily using the straight-line method.

During the ordinary course of business, the Company has entered into certain licenses and asset purchase agreements. Potential milestone payments for achieving sales targets or regulatory development milestones are recorded when it is probable of achievement. Upon a milestone payment being achieved, the milestone payment will be capitalized and amortized over the remaining useful life for approved products and expensed for milestones prior to FDA approval. Royalty payments are recorded as cost of goods sold as sales are recognized.

Impairment of Long-Lived Assets

The Company reviews long-lived assets, including property and equipment, for impairment at least annually or whenever events or changes in business circumstances indicate that the carrying amount of the assets may not be fully recoverable. Factors that the Company considers in deciding when to perform an impairment review include significant underperformance of the long-lived asset in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in the use of the assets. If an impairment review is performed to evaluate a long-lived asset for recoverability, the Company compares forecasts of undiscounted cash flows expected to result from the use and eventual disposition of the long-lived asset to its carrying value. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of an asset are less than its carrying amount. The impairment loss would be based on the excess of the carrying value of the impaired asset over its fair value, determined based on discounted cash flows.

Leases

Effective January 1, 2019, the Company accounts for its leases under ASC 842,*Leases*. Under this guidance, arrangements meeting the definition of a lease are classified as operating or financing leases and are recorded on the consolidated balance sheet as both a right-of-use asset and lease liability, calculated by discounting fixed lease payments over the lease term at the rate implicit in the lease or the Company's incremental borrowing rate. Lease liabilities are increased by interest and reduced by payments each period,

and the right-of-use asset is amortized over the lease term. For operating leases, interest on the lease liability and the amortization of the right-of-use asset result in straight-line rent expense over the lease term. Variable lease expenses are recorded when incurred.

In calculating the right-of-use asset and lease liability, the Company elects to combine lease and non-lease components.

Contingencies

The Company records accruals for contingencies and legal proceedings expected to be incurred in connection with a loss contingency when it is probable that a liability has been incurred and the amount can be reasonably estimated.

If a loss contingency is not probable but is reasonably possible, or is probable but cannot be estimated, the nature of the contingent liability, together with an estimate of the range of possible loss if determinable and material, would be disclosed.

Stock-based Compensation

The Company expenses stock-based compensation to employees and non-employees over the requisite service period based on the estimated grant-date fair value of the awards and actual forfeitures.

The fair value of the Company's common stock underlying the stock options is also an input to the Black-Scholes option pricing model. The Company engages an independent third-party valuation firm to provide an estimate of the fair value of its common stock annually, utilizing input from management. The fair value of the Company's common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

The Company estimates the fair value of stock option grants using the Black-Scholes option pricing model, which requires the use of a number of assumptions including the fair value of the common stock, expected volatility, risk-free interest rate, expected dividends and the expected term of the option. The assumptions used in calculating the fair value of stock-based awards represent management's best estimates and involve inherent uncertainties and the application of management's judgment. Forfeitures are recorded as they occur. All stock-based compensation costs are recorded in selling, general and administrative ("SG&A") expense in the consolidated statements of operations.

Income Taxes

As of December 31, 2020, the Company is included in the Fortress consolidated federal tax return and consolidated or combined state tax returns in multiple jurisdictions. The Company's consolidated financial statements recognize the current and deferred income tax consequences that result from the Company's activities during the current and preceding periods pursuant to the provisions of ASC Topic 740, Income Taxes, as if the Company were a separate taxpayer rather than a member of the Fortress consolidated income tax return group. Fortress has agreed that the Company does not have to make payments to Fortress for the Company's use of net operating losses ("NOLs") of Fortress (including other Fortress group members). Since Fortress does not require the Company to pay in any form for the utilization of the consolidated group's NOLs, the tax benefit the Company realizes has been recorded as a capital contribution.

The Company records income taxes using the asset and liability method. Deferred income tax assets and liabilities are recognized for the future tax effects attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases, and operating loss and tax credit carryforwards. The Company establishes a valuation allowance if management believes it is more likely than not that the deferred tax assets will not be recovered based on an evaluation of objective verifiable evidence. Management has considered the Company's history of cumulative tax and book income incurred since inception, and the other positive and negative evidence, and has concluded that it is more likely than not that the Company will realize the benefits of the net deferred tax assets as of December 31, 2020 and December 31, 2019.

For tax positions that are more likely than not of being sustained upon audit, the Company recognizes the largest amount of the benefit that is greater than 50% likely of being realized. For tax positions that are not more likely than not of being sustained upon audit, the Company does not recognize any portion of the benefit. As of December 31, 2020, the Company had no unrecognized tax benefits and does not anticipate any significant change to the unrecognized tax benefit balance. The Company would classify interest and penalties related to uncertain tax positions as income tax expense, if applicable. There was no interest expense or penalties related to unrecognized tax benefits recorded through December 31, 2020.

Earnings Per Share

Basic net income per share of common stock is calculated by dividing net income by the weighted-average number of shares of common stock outstanding during the reporting period. Diluted earnings per share is calculated by dividing net income by the weighted-average number of shares of common stock outstanding during the reporting period after giving effect to dilutive potential common shares for stock options and restricted stock units ("RSUs"), determined using the treasury stock method. See Note 14 below.

Comprehensive Income

The Company has no components of other comprehensive income, and therefore, comprehensive income equals net income.

Recently Adopted Accounting Pronouncements

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

Recently Issued Accounting Pronouncements

In December 2019, the FASB issued ASU No. 2019-12,*Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes* ("ASU 2019-12"), which is intended to simplify various aspects related to accounting for income taxes. ASU 2019-12 removes certain exceptions to the general principles in ASC 740 and also clarifies and amends existing guidance to improve consistent application. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements.

NOTE 3. INVENTORY

The Company's inventory consists of the following (dollars in thousands):

	As of December 31,	
	2020	2019
Finished Goods	$ 1,404	$ 857
Total Inventory	$ 1,404	$ 857

NOTE 4.PROPERTY AND EQUIPMENT

The Company's property and equipment consist of the following (dollars in thousands):

	Useful Life (Years)	As of December 31,	
		2020	2019
Leasehold improvements	2	$ 11	$11
Less: accumulated depreciation		(11)	(6)
Property and equipment, net		$ —	$ 5

Depreciation expense for the Company's property and equipment was $5,000 for both years ended December 31, 2020 and 2019 and was recorded in SG&A in the consolidated statements of operations.

NOTE 5. INTANGIBLES

On December 18, 2020, the Company entered an Asset Purchase Agreement (the "Anti-itch Product Agreement") with Sun Pharmaceutical Industries, Inc. ("Sun") for a topical product that is indicated to treat scabies and skin itch conditions ("Anti-itch Product"). Pursuant to the terms and conditions of the Anti-itch Product Agreement, the Company agreed to pay $4.0 million, comprised of a non-refundable deposit of $0.2 million upon the execution of the term sheet, an upfront cash payment of $1.8 million on January 1, 2021 and additional future payments of $0.5 million on April 1, 2021, $0.5 million on July 1, 2021, and $1.0 million on January 1, 2022. There are no subsequent milestone payments or royalties beyond the aforementioned payments. Commercial launch of this product is expected in the second half of 2021 or early 2022 upon completion of the revalidation of the manufacturing process which was discontinued by the seller.

The Company, in accordance with ASU 2017-01,*Business Combinations (Topic 805): Clarifying the Definition of a Business* ("ASU 2017-01"), determined the purchase of the Anti-itch Product did not constitute the purchase of a business, and therefore recorded the purchase price of the Anti-itch Product as an asset, to be amortized over the life of the product, which was deemed to be three years. The Company recorded a $3.9 million net intangible asset related to this transaction on the consolidated balance sheet as of December 31, 2020.

On July 29, 2020, the Company entered into a License and Supply Agreement with a third party to acquire intellectual property rights to Accutane®, an oral acne product that is indicated for the treatment of severe acne (the "Accutane Agreement"). Pursuant to the terms and conditions of the Accutane Agreement, the Company agreed to pay $5.0 million, comprised of an upfront payment of $1.0 million paid upon execution with remaining payments due as follows: $0.5 million upon achievement of FDA approval of the brand name (paid in 2020), $0.5 million upon the delivery of the first order (paid in 2021) and $3.0 million in future payments due in $1.0 million installments, on the 18-month anniversary, the 24-month anniversary and the 36-month anniversary of execution of the Accutane Agreement. Three additional milestone payments totaling $17.0 million are contingent upon the achievement of certain net sales milestones. Royalties in the low-double digits based on net sales, subject to specified reductions are also due. Commercial launch of this product is expected in the second half of 2021 or early 2022.

The Company, in accordance with ASU 2017-01 determined the conditions of the Accutane Agreement did not constitute the purchase of a business, and therefore recorded the consideration as an asset, to be amortized over the expected life of the product, which was deemed to be five years.

In accordance with the installment payment terms of the Accutane Agreement, the Company recorded a discount for imputed interest per ASC 835-30, *Interest-Imputed Interest*, of $0.3 million. The Company recorded a $4.7 million net intangible asset related to this transaction on the consolidated balance sheet as of December 31, 2020 (see Note 8 for treatment of installment payment — license).

On July 22, 2019, the Company purchased Ximino®, a minocycline hydrochloride used to treat acne from Sun. Pursuant to the terms and conditions of the Ximino Asset Purchase Agreement ("Ximino APA"), total consideration for the Ximino APA was $9.4 million, comprised of an upfront payment of $2.4 million that was paid within 60 days after execution on September 22, 2019. The remaining four payments totaling $7.0 million are due in consecutive years commencing on the second anniversary of execution of the Ximino APA. In addition, the Company is obligated to pay royalties in the mid-single digits based on net sales of Ximino, subject to specified reductions.

In accordance with the terms of the Ximino APA, the Company will incur interest expense in the event of payment default. As such, per ASC 835-30, the Company recorded an initial discount for imputed interest of $2.3 million. The Company recorded a $7.1 million intangible asset related to this transaction on the consolidated balance sheet as of December 31, 2019 (see Note 8 for treatment of installment payment — license).

The table below provides a summary of the Company's intangible assets (dollars in thousands):

	Estimated Useful Life (Years)	As of December 31, 2020	2019
Ceracade®	3	$ 300	$ 300
Luxamend®	3	50	50
Targadox®	3	1,250	1,250
Ximino®(1)	7	7,134	7,134
Exelderm®	3	1,600	1,200
Accutane®(2)	5	4,727	—
Anti-itch product(3)	3	3,945	—
Total		19,006	9,934
Less: accumulated amortization		(3,977)	(2,557)
Intangible assets, net		$15,029	$ 7,377

(1) Includes an upfront payment of $2.4 million and four payments totaling $7.0 million due in consecutive years commencing on the second anniversary of the execution of the Ximino APA. Such payments were discounted by $2.3 million due to the long-term nature of such payments (also see Note 8).

(2) Includes an upfront payment of $1.0 million and one milestone payment of $0.5 million in 2020 as well as four payments totaling $3.5 million due at various points between 2021 through 2023. Such payments were discounted by $0.3 million due to the long-term nature of such payments (also see Note 8). As of December 31, 2020, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the year ended December 31, 2020. The Company expects the asset to be placed in service in the second half of 2021. Once the asset is placed in service the Company will amortize the asset over five years, which represents its expected useful life.

(3) Includes an upfront payment of $0.2 million, three payments totaling $2.8 million due in 2021 and $1.0 million due in 2022. Such payments were discounted by $0.1 million due to the long-term nature of such payments (also see Note 8). As of December 31, 2020, this asset has not yet been placed in service, therefore no amortization expense was recognized on this asset for the year ended December 31, 2020. Commercial launch of this product is expected in the third quarter of 2021.

Amortization expense for the Company's intangible assets for the years ended December 31, 2020 and 2019 was $1.4 million and $1.2 million, respectively, and was recorded in cost of goods sold in the consolidated statements of operations.

The future amortization of these intangible assets for the years ending is as follows (dollars in thousands):

	Ximino®	Exelderm®	Accutane®	Total Amortization
December 31, 2021	$ 1,019	$667	$ 788	$ 2,074
December 31, 2022	1,019	—	945	1,964
December 31, 2023	1,019	—	945	1,964
December 31, 2024	1,019	—	945	1,964
December 31, 2025	1,019	—	945	1,964
Thereafter	595	—	159	754
Sub-total	$ 5,690	$667	$ 4,727	$ 11,084
Assets not yet placed in service	—	—	—	3,945
Total	$ 5,690	$667	$ 4,727	$ 15,029

NOTE 6. RELATED PARTY AGREEMENTS

In the normal course of business, the Company reimburses Fortress for various payroll related costs and general and administrative costs. As of each December 31, 2020 and 2019, the Company had a balance of approximately $0.1 million recorded as accounts payable — related party on the consolidated balance sheets.

Fortress Note

Since the Company's inception in October 2014, Fortress has funded the Company's operations through a working capital loan pursuant to the terms of a future advance promissory note (the "Fortress Note"). The Fortress Note matures on or before December 31, 2024.

As of both December 31, 2020 and 2019, the Company had an outstanding balance of approximately $5.2 million under this related party note, which is recorded as a long-term note payable — related party on the consolidated balance sheets. This is an interest-free note.

Fortress Income Tax

As of December 31, 2020, the Company is 92.9% owned by Fortress and has been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. In connection with filing consolidated tax return, the Company's tax liabilities for the years ended December 31, 2020 and 2019, of $1.9 million and $1.4 million, respectively were satisfied utilizing NOLs generated by Fortress. Extinguishment of these liabilities to Fortress was recorded on the Company's consolidated balance sheets as contributions of capital.

Additionally, see Note 13 below for a discussion of income taxes.

NOTE 7. ACCRUED EXPENSES

Accrued expenses consisted of the following (dollars in thousands):

	As of December 31,	
	2020	2019
Accrued expenses:		
Accrued employee compensation	$ 2,041	$ 1,762
Accrued royalties payable	2,682	2,320
Accrued coupon and rebates	12,869	9,291
Accrued returns reserve	2,580	4,516
Other	1,326	817
Total accrued expenses	$21,498	$18,706

NOTE 8. INSTALLMENT PAYMENTS — LICENSES

As of December 31, 2019, the Company recorded a note payable of $4.7 million, net of an imputed interest discount of $2.3 million, in connection with its acquisition of Ximino (see Note 5). The imputed interest discount was calculated utilizing an 11.96% effective interest rate based upon an unsecured, non-investment grade "CCC" rate. Interest expense associated with the note payable for Ximino was $0.6 million and $0.3 million for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2020, the Company recorded a note payable of $3.7 million, net of an imputed interest discount of $0.3 million, in connection with its acquisition of Accutane (see Note 5). The imputed interest discount was calculated utilizing an 4.00% effective interest rate based upon a fully secured asset-based lending rate. Interest expense associated with the note payable for Accutane was $0.1 million and $0 for the years ended December 31, 2020 and 2019, respectively.

As of December 31, 2020, the Company recorded a note payable of $3.7 million, net of an imputed interest discount of $0.1 million, in connection with its acquisition of an Anti-itch Product (see Note 5).

The imputed interest discount was calculated utilizing an 4.25% effective interest rate based upon a fully secured asset-based lending rate. Interest expense associated with the note payable for the Anti-itch Product was $1,000 and $0 for the years ended December 31, 2020 and 2019, respectively.

The future amortization of the discount for notes payable for the years ending is as follows (dollars in thousands):

	Principal	Imputed Interest Discount	Total Notes Payable
December 31, 2021	$ 5,300	$ (778)	$ 4,522
December 31, 2022	5,000	(490)	4,510
December 31, 2023	2,500	(276)	2,224
December 31, 2024	1,500	(97)	1,403
Total	$14,300	$ (1,641)	$ 12,659

NOTE 9. OPERATING LEASE OBLIGATIONS

The Company leases 3,681 square feet of office space in Scottsdale, Arizona. In August 2020, the Company amended its office lease and extended the lease term for an additional 25 months at an annual rate of approximately $0.1 million. The term of the amended lease commenced on December 1, 2020 and will expire on December 31, 2022.

The Company recorded rent expense as follows (dollars in thousands):

	For the Years Ended December 31,	
	2020	2019
Lease cost		
Operating lease cost	$ 94	$ 94
Variable lease cost	6	4
Total lease cost	$ 100	$ 98

The following table summarizes quantitative information about the Company's operating leases (dollars in thousands):

	For the Years Ended December 31,	
	2020	2019
Operating cash flows from operating leases	$ 86	$ 94
Right-of-use assets exchanged for new operating lease liabilities	182	—
Weighted-average remaining lease term – operating leases	1.5	1.0
Weighted-average discount rate – operating leases	5.0%	6.0%

As of December 31, 2021, future minimum lease payments under lease agreements associated with the Company's operations were as follows (dollars in thousands):

	Future Lease Liability
Year Ended December 31, 2021	$ 91
Year Ended December 31, 2022	100
Total	191
Less: present value discount	(9)
Operating lease liabilities	$ 182

NOTE 10. COMMITMENTS AND CONTINGENCIES

License Agreements

The Company has undertaken to make contingent milestone payments to the licensors of its portfolio of drug products and candidates. In addition, the Company shall pay royalties to such licensors based on a percentage of net sales of each drug candidate following regulatory marketing approval. For additional information on future milestone payments and royalties, see Note 5.

NOTE 11. STOCKHOLDERS' EQUITY

Common Stock

The Company's Certificate of Incorporation, as amended, authorizes the Company to issue 50,000,000 shares of $0.0001 par value Common Stock of which 6,000,000 shares are designated and authorized as Class A Common Stock.

Voting Rights

Each holder of Common Stock is entitled to one vote per share of Common Stock held on all matters submitted to a vote of the stockholders, including the election of directors. The Company's Certificate of Incorporation and bylaws do not provide for cumulative voting rights.

Each holder of Class A Common Stock is entitled to a number of votes that is equal to 1.1 times a fraction, the numerator of which is the sum of the shares of outstanding Common Stock including the Class A Common Stock and the denominator of which is the number of outstanding shares of Class A Common Stock. Thus, the Class A Common Stock will at all times constitute a voting majority.

Dividends

The holders of the Company's outstanding shares of Common Stock and Class A Common Stock are entitled to receive dividends, if any, as may be declared from time to time by the Company's Board of Directors out of legally available funds.

Liquidation

In the event of the Company's liquidation, dissolution or winding up, holders of Common Stock and Class A Common Stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of the Company's debts and other liabilities, subject to the satisfaction of any liquidation preference granted to the holders of any outstanding shares of Preferred Stock.

Rights and Preference

Holders of the Company's Common Stock and Class A Common Stock have no preemptive, conversion or subscription rights, and there is no redemption or sinking fund provisions applicable to either the Common Stock or the Class A Common Stock. The rights, preferences and privileges of the holders of Common Stock and Class A Common Stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of the Company's Preferred Stock that are or may be issued.

Stock Options

In 2015, the Company's Board of Directors adopted, and stockholders approved, the Journey Medical 2015 Stock Plan (the "Plan") authorizing the Company to grant up to 3,000,000 shares of common stock to eligible employees, directors, and consultants in the form of restricted stock, stock options and other types of grants. In August 2020, the Company's Board of Directors approved an increase to the shares available for issuance under the Plan by 642,857 shares. The amount, terms, and exercisability provisions of grants are determined by the Board of Directors. As of December 31, 2020 and 2019, 34,000 and 149,792 shares, respectively, were available for issuance under the Plan.

The fair value of each option award was estimated on the grant date using the Black Scholes option-pricing model and expensed under the straight-line method. There were no options granted during the year ended December 31, 2020. The fair value of option awards granted in 2019 was calculated using the following range of assumptions:

Risk-free interest rate	1.85% – 2.09%
Expected dividend yield	—
Expected term in years	5.0 – 10.0
Expected volatility	111.43% – 112.03%

Stock options granted generally vest annually over four years and have a ten-year term. The Company lacks company-specific historical and implied volatility information. Therefore, it estimates its expected stock volatility based on the historical volatility of a publicly traded set of peer companies. Due to the lack of historical exercise history, the expected term of the Company's stock options has been determined using the "simplified" method for awards. The risk-free interest rate is determined by reference to the U.S. Treasury yield curve in effect at the time of grant of the award for time periods approximately equal to the expected term of the award. Expected dividend yield is zero based on the fact that the Company has never paid cash dividends and does not expect to pay any cash dividends in the foreseeable future.

The fair value of the Company's common stock underlying the stock options is also an input to the Black-Scholes option pricing model. The Company engaged an independent third-party valuation firm to provide an estimate of the fair value of its common stock for the year ended December 31, 2018 utilizing input from management. The fair value of the Company's common stock was determined considering a number of objective and subjective factors, including valuations of guideline public companies, transactions of guideline public companies, discounts for lack of control transactions, lack of liquidity of the Company's common stock and the general and industry-specific economic outlook.

As of December 31, 2018, management, with the assistance of the independent third-party valuation firm, estimated the fair value of a share of common stock to be $1.39 using the option pricing method. This value was used to value the 2019 stock option grant. The assumptions used in the valuation were as follows:

Risk-free interest rate	2.49%
Expected dividend yield	—
Expected term in years	4.0
Expected volatility	75%

The weighted average grant date fair value of options granted during the year ended December 31, 2019 was $1.20 per share.

The following table summarizes the Company's stock option activities:

	Number of Shares	Weighted Average Exercise Price	Total Weighted Average Intrinsic Value	Weighted Average Remaining Contractual Life (Years)
Outstanding options as of December 31, 2018	2,050,000	$ 0.72	$ 1,382,450	7.39
Granted	285,000	1.39	—	—
Forfeited	(41,000)	1.20	52,156	—
Outstanding options as of December 31, 2019	2,294,000	0.79	$ 5,916,970	6.73
Exercised	(18,000)	0.69	29,428	—
Forfeited	(134,000)	0.72	325,359	—
Outstanding options as of December 31, 2020	2,142,000	$ 0.80	$ 7,934,320	5.72
Options vested and exercisable as of December 31, 2020	1,865,083	$ 0.72	$ 7,046,658	5.38

During the years ended December 31, 2020 and 2019, exercises of stock options resulted in total proceeds of approximately $13,000 and nil, respectively. For both years ended December 31, 2020 and 2019, the Company recognized approximately $0.2 million of stock-based compensation expense related to options which was recorded in SG&A in the consolidated statements of operations.

As of December 31, 2020, the Company had unrecognized stock-based compensation expense related to all unvested options of $0.1 million, which the Company expects to recognize over a weighted-average period of approximately 1.4 years.

Restricted Stock Units

The following table summarizes the Company's restricted stock activities:

	Number of Units	Weighted Average Exercise Price
Unvested balance at December 31, 2019	—	$ —
Granted	845,524	3.37
Forfeited	(30,000)	3.37
Unvested balance at December 31, 2020	815,524	$ 3.37

The RSUs granted during the year ended December 31, 2020, vest contingent upon a change of control, sale of the Company or an initial public offering event occurring within five years of the grant date. As of December 31, 2020, no stock-based compensation expense has been recorded related to these grants. Stock-based compensation expense for these awards in the amount of $2.8 million, the fair value as calculated on the grant date, will be recorded if and when it becomes probable that one of the contingent vesting events will be achieved.

NOTE 12. REVENUES FROM CONTRACTS AND SIGNIFICANT CUSTOMERS

Disaggregation of Net Revenues

The Company has five marketed products, Targadox®, Ximino®, Exelderm®, Luxamend® and Ceracade®. Substantially all of the Company's product revenues are recorded in the U.S. Revenues by product are summarized as follows (dollars in thousands):

	December 31,	
	2020	2019
Targadox®	$30,708	$28,068
Ximino®	9,518	3,642
Exelderm®	4,453	2,867
Other branded revenue	(148)	344
Total product revenue, net	$44,531	$34,921

Significant Customers

For the year ended December 31, 2020, none of the Company's customers accounted for more than 10% of its total gross product revenue.

For the year ended December 31, 2019, two of the Company's customers each accounted for more than 10% of its total gross product revenue, accounting for approximately 50% and 10%, respectively.

As of December 31, 2020, one of the Company's customers accounted for 12% of its total accounts receivable balance.

As of December 31, 2019, two of the Company's customers accounted for more than 10% of its total accounts receivable balance with 21% and 18%, respectively.

Included in product revenue, net, for the years ended December 31, 2020 and 2019 was $1.4 million and nil, respectively, of revenue that was constrained in a prior period.

NOTE 13. INCOME TAXES

As of December 31, 2020, the Company is 92.9% owned by Fortress and has been filing consolidated federal tax returns and consolidated or combined state tax returns in multiple jurisdictions with Fortress. However, for separate financial statement purposes, the Company determines its provision for income taxes on a stand-alone basis.

The components of the income tax provision are as follows (dollars in thousands):

	For the Years Ended December 31,	
	2020	2019
Current:		
Federal	$ 1,669	$ 1,110
State	536	200
Total current	2,205	1,310
Deferred:		
Federal	(234)	(28)
State	(101)	97
Total deferred	(335)	69
Total income tax expense	$ 1,870	$ 1,379

Deferred income taxes reflect the net tax effects of (a) temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes, and (b) operating losses and tax credit carryforwards.

The significant components of the Company's deferred tax assets consisted of the following (dollars in thousands):

	As of December 31,	
	2020	2019
Deferred tax assets:		
Net operating loss carryforwards	$ 5	$ 46
Amortization of license fees	1,086	905
Stock compensation	113	128
Lease liability	48	21
Reserve on sales return, discount and bad debt	765	1,119
Accruals and reserves	248	40
Total deferred tax assets	2,265	2,259
Deferred tax liability:		
Section 481(a) adjustment on reserve on sales return, discount and bad debt	(765)	(1,119)
Right-of-use asset	(46)	(21)
Deferred tax assets, net	$1,454	$ 1,119

A reconciliation of the statutory tax rates and the effective tax rates is as follows:

	For the Years Ended December 31,	
	2020	2019
Percentage of pre-tax income:		

	For the Years Ended December 31,	
	2020	2019
U.S. federal statutory income tax rate	21%	21%
State taxes, net of federal benefit	6%	3%
Non-deductible items	0%	1%
Provision to return	0%	1%
Change in state rate	-1%	0%
Other	0%	2%
Effective income tax rate	26%	28%

The Company has incurred NOLs in previous years. As of December 31, 2020, the Company had utilized all previously generated federal NOLs and had remaining state NOLs of approximately $0.1 million, which will begin to expire in 2036.

In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act ("CARES Act") was signed into law on March 27, 2020. The CARES Act, among other things, includes tax provisions relating to refundable payroll tax credits, deferment of employer's social security payments, net operating loss utilization and carryback periods and modifications to the net interest deduction limitations. The CARES Act did not have a material impact on the Company's income tax provision for 2020. The Company will continue to evaluate the impact of the CARES Act on its financial position, results of operations and cash flows.

On December 27, 2020, the President of the United States signed the Consolidated Appropriations Act, 2021 ("Consolidated Appropriations Act") into law. The Consolidated Appropriations Act is intended to enhance and expand certain provisions of the CARES Act, allows for the deductions of expenses related to the Payroll Protection Program funds received by companies, and provides an update to meals and entertainment expensing for 2021. The Consolidated Appropriations Act did not have a material impact to the Company's income tax provision for 2020.

The Company is subject to U.S. federal and various state taxes. Generally, the tax years remain open for examination by the federal statute under a three-year statute of limitation; however, states generally keep their statutes open for four years. However, the Company's tax years from 2017 and after are subject to examination by the United States and state taxing authorities due to the carry forward of unused NOLs.

NOTE 14. NET INCOME PER COMMON SHARE

The following is a reconciliation of the numerator and denominator of the diluted net income per share computations for the periods presented below (in thousands except for share and per share amounts):

	For the Years Ended December 31,	
	2020	2019
Net income	$ 5,283	$ 3,625
Weighted average shares outstanding – basic	9,135,985	9,133,333
Stock options	1,700,137	942,471
Weighted average shares outstanding – diluted	10,836,122	10,075,804
Per share data:		
Basic	$ 0.58	$ 0.40
Diluted	$ 0.49	$ 0.36

NOTE 15. SUBSEQUENT EVENTS

8% Cumulative Convertible Class A Preferred Offering

In February 2021, the Company commenced an offering of 8% Cumulative Convertible Class A Preferred Stock ("Class A Preferred Offering") in an aggregate minimum amount of $12.5 million and an

aggregate maximum amount of $30.0 million, which may be increased if the Company and the placement agent agree to do so. The Class A Preferred Offering terminated on July 21, 2021. Pursuant to the terms of the agreement, the Class A Preferred Stock automatically converts into the Company's common stock upon a sale of the Company or a financing in an amount of at least $25.0 million within a year of the closing date of the Class A Preferred Offering (extendable by another six months at the Company's option) at a discount of 15% to the per share qualified stock price. In the event that neither a sale of the Company nor a $25.0 million financing is completed, the Class A Preferred Stock will be exchanged for shares of Fortress common stock, at a 7.5% discount to the average Fortress common stock trading price over the 10-day period preceding such exchange.

Dividends on the Class A Preferred Stock will be paid quarterly in shares of Fortress common stock based upon a 7.5% discount to the average trading price over the 10-day period preceding the dividend payment date. Furthermore, Fortress is obligated to file one or more registration statements covering the issuance of shares that result from such dividends/exchange. As consideration for the foregoing, the Company will issue to Fortress additional shares of common stock, debt securities, or a combination of the two.

The Company evaluated the terms of the Class A Preferred Offering under ASC 480, *Distinguishing Liabilities from Equity*, and determined the instrument met the criteria to be recorded as a liability. The value at conversion does not vary with the value of Journey's common shares, so the settlement provision would not be considered a conversion feature. Accordingly, the Company determined liability classification is appropriate.

As of July 20, 2021, the Company completed five closings in connection with the Class A Preferred Offering ("Closings"). In connection with the Closings, the Company issued an aggregate of 758,680 Class A Preferred shares at a price of $25.00 per share, for gross proceeds of $19.0 million. Following the payment of placement agent fees of $1.9 million, and other expenses of $0.1 million, the Company received $17.0 million of net proceeds.

East West Bank Working Capital Line of Credit

On March 31, 2021, the Company entered into an agreement with East West Bank ("EWB") in which EWB agreed to provide a $7.5 million working capital line of credit. The line of credit is secured by the Company's receivables and cash. Interest on the line is the greater of 4.25% or the Prime Rate plus 1%. The agreement matures in 36 months.

Asset Purchase Agreement with Dermira, Inc.

On March 31, 2021, the Company executed an Asset Purchase Agreement (the "Qbrexza APA") with Dermira, Inc. a subsidiary of Eli Lilly and Company ("Dermira"). Pursuant to the terms of the agreement, the Company acquired the rights to Qbrexza® (glycoprronium), a prescription cloth towelette to treat primary axillary hyperhidrosis in patients nine years of age or older. Upon HSR acceptance, which was received on May 13, 2021, the Company paid the upfront fee of $12.5 million to Dermira. In addition, Dermira is eligible to receive up to $144 million in the aggregate upon the achievement of certain milestones. Royalties ranging from the lower teen digits to the upper teen digits will be payable on net sales of Qbrexza® products, of which royalty amounts are subject to 50% diminution in the event of loss of exclusivity due to the introduction of an authorized generic. Upon closing of the Qbrexza® purchase, the Company became substituted for Dermira as the plaintiff in U.S. patent litigation commenced by Dermira on October 21, 2020 in the U.S. District Court of Delaware (the "Patent Litigation") against Perrigo Pharma International DAC ("Perrigo") alleging infringement of certain patents covering Qbrexza® (the "Qbrexza® Patents"), which are included among the proprietary rights to Qbrexza® to be acquired pursuant to the Qbrexza APA. The Patent Litigation was initiated following the submission by Perrigo, in accordance with the procedures set out in the Drug Price Competition and Patent Term Restoration Act of 1984 (the "Hatch-Waxman Act"), of an Abbreviated New Drug Application ("ANDA"). The ANDA seeks approval to market a generic version of Qbrexza® prior to the expiration of the Qbrexza® Patents and alleges that the Qbrexza® Patents are invalid. Perrigo is subject to a 30-month stay preventing it from selling a generic version, but that stay is set to expire on March 9, 2023. Trial in the Patent Litigation is scheduled for September 19, 2022. The Company cannot make any predictions about the final outcome of this matter or the timing thereof.

Agreement with Dr. Reddy's Laboratories, Ltd.

On June 29, 2021 (the "Effective Date"), the Company entered a license, collaboration, and assignment agreement (the "DFD Agreement") to obtain the global rights for the development and commercialization of a late-stage development modified release oral minocycline for the treatment of rosacea ("DFD-29") with Dr. Reddy's Laboratories, Ltd ("DRL"). Pursuant to the terms and conditions of the DFD-29 Agreement, the Company agreed to pay an upfront payment of $10.0 million, of which $2.0 million was payable upon the Effective Date and $8.0 million is payable 90 days following the Effective Date with additional contingent regulatory and commercial milestone payments, totaling up to $163.0 million. Royalties ranging from ten percent to twenty percent are payable on net sales of the product.

Additionally, the Company is required to fund and oversee the Phase III clinical trials approximating $24.0 million, based upon the current development plan and budget. In the event the Company cannot satisfy its obligations under this agreement; liquidated damages are capped at $2.0 million.

Further, at the close of an Initial Public Offering ("IPO") of the Company's common stock or a listing of the Company's common stock on a National Exchange in which the Company's market capitalization on a fully diluted basis is $150 million at the close of business on the date of the IPO, the Company agreed to: (a) issue to DRL a number of shares of the Company's common stock equal to $5.0 million as calculated using a fifteen (15) day volume weighted average price of the Company's closing price, measured fifteen (15) days following the listing, without any additional consideration (financial or otherwise) from DRL, or (b) make a cash payment to DRL equal to $5.0 million.

In the event, the IPO consideration as discussed above is not satisfied, and the Company or its affiliate execute a definitive agreement for an acquisition event during the period beginning on the Effective Date and ending twenty-four (24) months after the regulatory approval of DFD-29, the Company shall pay to DRL: (a) 20% of value of DFD-29 attributable to the acquisition event, if acquisition occurs between closing and NDA approval; or (b) 12% if acquisition occurs after NDA approval and ending 24 months later.

shares

Common Stock

Journey Medical Corporation

PROSPECTUS

, 2021

B. Riley Securities

Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in our common stock, whether or not participating in our initial public offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution

The following table sets forth the costs and expenses, other than the underwriting discounts and commissions, payable by the registrant in connection with the sale of our common stock being registered. All amounts are estimates except for the Securities and Exchange Commission, or SEC, registration fee, the Financial Industry Regulatory Authority, or FINRA, filing fee and the Nasdaq Capital Market, or Nasdaq, listing fee.

	Amount to Be Paid
SEC Registration fee	$4,364.00
Legal fees and expenses	$ *
FINRA filing fee	$ *
Nasdaq listing fee	$ *
Accounting fees and expenses	$ *
Printing expenses	$ *
Transfer agent fees and expenses	$ *
Miscellaneous	$ *
Total	$ *

* To be disclosed by amendment.

Item 14. Indemnification of Directors and Officers

Section 145(a) of the Delaware General Corporation Law, or DGCL. provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) because that person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, so long as the person acted in good faith and in a manner he or she reasonably believed was in or not opposed to the corporation's best interests, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 145(b) of the DGCL provides, in general, that a Delaware corporation may indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action or suit by or in the right of the corporation to obtain a judgment in its favor because the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of such action, so long as the person acted in good faith and in a manner the person reasonably believed was in or not opposed to the corporation's best interests, except that no indemnification shall be permitted without judicial approval if a court has determined that the person is to be liable to the corporation with respect to such claim. Section 145(c) of the DGCL provides that, if a present or former director or officer has been successful in defense of any action referred to in Sections 145(a) and (b) of the DGCL, the corporation must indemnify such officer or director against the expenses (including attorneys' fees) he or she actually and reasonably incurred in connection with such action.

Section 145(g) of the DGCL provides, in general, that a corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or other enterprise against any liability asserted against and incurred by such person, in any such capacity, or arising out of his or her status as such, whether or not the corporation could indemnify the person against such liability under Section 145 of the DGCL.

As permitted by Section 102 of the Delaware General Corporation Law, or the DGCL, we have adopted provisions in our certificate of incorporation that limit the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the DGCL. Delaware law provides that directors of a corporation will not be personally liable for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

- any breach of their duty of loyalty to the corporation or the stockholder;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our certificate of incorporation and our Bylaws also provide that we will indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our Bylaws covers at least negligence and gross negligence on the part of indemnified parties. Our Bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our Bylaws would permit indemnification. We have secured such insurance.

In addition,we have entered into separate indemnification agreements with our directors and officers in addition to the indemnification provided for in our certificate of incorporation and bylaws. These indemnification agreements provide, among other things, that we will indemnify our directors and officers for certain expenses, including damages, judgments, fines, penalties, settlements and costs and attorneys' fees and disbursements, incurred by a director or officer in any claim, action or proceeding arising in his or her capacity as a director or officer of the company or in connection with service at our request for another corporation or entity. The indemnification agreements also provide for procedures that will apply in the event that a director or officer makes a claim for indemnification.

We have entered into an underwriting agreement in connection with this offering, which provides for indemnification by the underwriter of us, our officers and directors, for certain liabilities, including liabilities arising under the Securities Act.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable.

Item 15. Recent Sales of Unregistered Securities

Since January 1, 2018, we have made the issuances of our unregistered securities described below. Also included is the consideration received by us for such securities and information relating to the section of the Securities Act, or rule of the SEC, under which exemption from registration was claimed.

On March 31, 2021, we held the initial closing of a private placement offering (the "Private Placement") of our 8% Cumulative Convertible Class A Preferred Stock (the "Class A Preferred Stock"), pursuant to a private placement agreement with National Securities Corporation, currently owned by B. Riley Securities, as

placement agent. In connection with the initial closing of the Private Placement, we issued 502,480 shares of our Class A Preferred Stock at a price of $25.00 per share, for gross proceeds of approximately $12,562,000.

On April 30, 2021, we issued and sold 28,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for gross proceeds of approximately $700,000.

On June 18, 2021, we issued and sold 43,800 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $1,080,000.

On July 15, 2021, we issued and sold 177,400 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $4,435,000.

On July 20, 2021, we issued and sold 8,000 shares of our Class A Preferred Stock in a subsequent closing of the Private Placement at a purchase price of $25.00 per share, for total gross proceeds of approximately $200,000.

These issuances were made in reliance on an exemption from registration set forth in Section 4(a)(2) of the Securities Act, as transactions by an issuer not involving a public offering. The purchasers of securities in each such transaction represented their intention to acquire the securities for investment only and not with a view to offer or sell, in connection with any distribution of the securities. Please see "*Description of Capital Stock*."

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits.

The exhibits to the Registration Statement are listed in the Exhibit Index below and incorporated by reference herein.

Exhibit Index

Exhibit Number	Description
1.1	Form of Underwriting Agreement. ♦
3.1	Form of Second Amended and Restated Certificate of Incorporation of Journey Medical Corporation.
3.2	Form of Amended and Restated Bylaws of Journey Medical Corporation.
4.1	Form of Common Stock Certificate. ♦
5.1	Opinion of Alston & Bird LLP. ♦
10.1	Journey Medical Corporation 2015 Stock Plan. ±
10.2	Executive Employment Agreement with Claude Maraoui, dated September 22, 2014. ±
10.3	Non-Employee Director Compensation Plan.
10.4	Loan and Security Agreement, entered into by and between Journey Medical Corporation and East West Bank, dated March 31, 2021.
10.5	Asset Purchase Agreement for Qbrexza, entered into by and between Journey Medical Corporation and Dermira, Inc., a subsidiary of Eli Lilly and Company, dated as of March 31, 2021. *
10.6	License and Supply Agreement for Accutane, entered into by and between Journey Medical Corporation and a third party, dated as of July 29, 2020. *
10.7	License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of March 10, 2015. *

Exhibit Number	Description
10.8	First Amendment to the License and Supply Agreement for Targadox, entered into by and between Journey Medical Corporation and Blu Caribe Inc., dated as of August 26, 2015.
10.9	Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of August 31, 2018. *
10.10	Amendment 1 to the Asset Purchase Agreement for Exelderm, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of September 5, 2018. *
10.11	Asset Purchase Agreement for Ximino, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of July 22, 2019. *
10.12	Asset Purchase Agreement for the Anti-itch Product, entered into by and between Journey Medical Corporation and Sun Pharmaceutical Industries, Inc., dated as of December 18, 2020. *
10.13	License, Collaboration, and Assignment Agreement for DFD-29, entered into by and between Journey Medical Corporation and Dr. Reddy's Laboratories Ltd., dated as of June 29, 2021. *
10.14	Form of Shared Services Agreement with Fortress Biotech, Inc.♦
10.15	Fortress Promissory Note, dated as of June 6, 2015.
10.16	Form of Indemnification Agreement between Journey Medical Corporation and each director.
23.1	Consent of KPMG LLP. ♦
23.2	Consent of Alston & Bird LLP (included in Exhibit 5.1). ♦
24.1	Power of Attorney (included on signature page).

♦ To be filed by amendment.

+ Indicates management contract or compensatory plan.

* Certain confidential portions of this exhibit have been omitted pursuant to Item 601(b) of Regulation S-K.

Item 17. Undertakings

(a) The undersigned registrant hereby undertakes:

1. To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

   (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

   (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

   (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

2. That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

3. To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

5. That, for the purpose of determining liability under the Securities Act of 1933 to any purchaser:

   (A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

   (B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

6. That, for the purpose of determining liability of the registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the

securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

(i) The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of [ ], State of [ ], on this [ ] day of [ ], 2021.

Journey Medical Corporation

By: _____

Claude Maraoui
Chief Executive Officer, President and Director

POWER OF ATTORNEY

We, the undersigned directors and officers of Journey Medical Corporation, hereby severally constitute and appoint Claude Maraoui and Lindsay Rosenwald, acting singly, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her in any and all capacities, to sign any or all amendments (including pre-effective and post-effective amendments) to this registration statement, and to file the same, with all exhibits thereto and other documents in connection therewith, including any Registration Statement filed pursuant to Rule 462(b) under the Securities Act of 1933, with the SEC, granting unto said attorney-in-fact and agent, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or any of his substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
Claude Maraoui	Chief Executive Officer, President and Director (Principal Executive Officer)	, 2021
Lindsay A. Rosenwald, M.D.	Executive Chairman	, 2021
Robyn M. Hunter	Interim Chief Financial Officer (Principal Financial and Accounting Officer)	, 2021
Neil Herskowitz	Director	, 2021
Jeff Paley, M.D.	Director	, 2021
Justin Smith	Director	, 2021
Miranda Toledano	Director	, 2021

SECOND
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
JOURNEY MEDICAL CORPORATION

This Amended and Restated Certificate of Incorporation amends and restates the corporation's original certificate of incorporation under the name Coronado Dermatology, Inc. originally filed July 18, 2014, as amended by the certificate of amendment filed on September 24, 2014, and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law by the Corporation's directors and stockholders.

ARTICLE I

The name of the corporation is Journey Medical Corporation (the "***Corporation***").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is 3500 South DuPont Highway, in the City of Dover, Kent County, Delaware 19901. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation law (the "***DGCL***"), and to possess and exercise all of the powers and privileges granted by such law and any other law of the State of Delaware.

ARTICLE IV

1. **Stock.** The Corporation is authorized to issue two classes of stock to be designated "Common Stock" and "Preferred Stock." The total number of shares of capital stock that the Corporation shall have authority to issue is fifty million (50,000,000) shares of Common Stock, with $0.0001 par value, of which 6,000,000 shares are designated as "Class A Common Stock" (the "***Class A Common Stock***"), and [ ] of which shall be Preferred Stock, with $.0001 par value. The numberof authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote (voting together as a single class on an as-if-converted basis). The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the corporation entitled to vote thereon, without a separate vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

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2. **Blank-Check Preferred Stock.** The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the *"Board"*) is hereby expressly authorized to provide for the issue of all of any of the remaining shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such shares and as may be permitted by the DGCL. The Board is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

3. **Rights.** The powers, preferences and relative participating, optional and other special rights of the respective classes of the Corporation's capital stock or the holders thereof and the qualifications, limitations and restrictions thereof are as follows**:**

3.1 Dividends. The Corporation shall declare, pay and set aside dividends among the holders of the shares of Common Stock and the Class A Common Stock, pro rata based on the number of shares of Common Stock held by each such holder, treating for this purpose all such shares of Class A Common Stock as if they had been converted to Common Stock pursuant to the terms of the Certificate of Incorporation immediately prior to such declaration, payment or setting aside of dividends.

3.2 Voting.

3.2.1 General.

(a) Subject to Subsection IV.3.2.1, the holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) [Reserved].

(c) Subject to Subsection IV.3.2.1, on any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outs Finding shares of Class A Common Stock shall be entitled to cast for each share of Class A Common stock held by such holder as of the record date for determining stockholders entitled to vote on such matter, the number of votes that is equal to one and one-tenth (1.1) times a fraction, the numerator of which is the suni of the shares of outstanding Common Stock and the denominator of which is number of shares of

outstanding Class A Common Stock.

(d) Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Class A Common Stock shall vote together with the holders of Common Stock as a single class.

3.3 Election of Directors.

3.3.1 Notwithstanding any provision of the Bylaws of this Corporation, for a period of ten (10) years from the date of the first issuance of shares of Class A Common Stock (the "***Class A Director Period***"), the holders of record of the shares of Class A Common Stock (or other capital stock or securities issued upon conversion of or in exchange for the Class A Common Stock), exclusively and as a separate class, shall be entitled to appoint or elect the majority of the directors of the Corporation (the "***Class A Directors***").

3.3.2 The holders of record of the shares of Common Stock (including Class A Common Stock) and of any other class or series of voting stock, exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation, if any.

3.3.3 Any director may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class(es) of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. A vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection IV.3.2.

4. Conversion.

The holders of the Class A Common Stock shall have conversion rights as follows (the "***Conversion Rights***"):

4.1 Right to Convert Conversion Ratio. Each share of Class A Common Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into one (1) fully paid and nonassessable share of Common Stock (the "***Conversion Ratio***"), subject to adjustment as provided below.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Class A Common Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Class A Common Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Class A Common Stock to voluntarily convert shares of Class A Common Stock into shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock), such holder shall surrender the certificate or certificates for such shares of Class A Common Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Class A Common Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Class A Common Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "***Conversion Time***"), and the shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, issue and deliver to such holder of Class A Common Stock , or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable upon such conversion in accordance with the provisions hereof, a certificate for the number (if any) of the shares of Class A Common Stock represented by the surrendered certificate that were not converted into Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock), and cash as provided in Subsection IV.4.2 in lieu of any fraction of a share of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) otherwise issuable upon such conversion and payment of any declared but unpaid dividends on the shares of Class A Common Stock.

4.3.2 Reservation of Shares. The Corporation shall at all times when Class A Common Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Class A Common Stock, such number of its duly authorized shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) as shall from time to time be sufficient to effect the conversion of all outstanding Class A Common Stock; and if at any time the number of authorized but unissued shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) shall not be sufficient to effect the conversion of all then outstanding shares of the Class A Common Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation.

4.3.3 Effect of Conversion. All shares of Class A Common Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) in exchange therefor and to receive payment of any dividends declared but unpaid thereon. Any shares of Class A Common Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Class A Common Stock accordingly.

4.3.4 Taxes and Liens. The Corporation shall pay any and all costs incurred by the Corporation to effect the conversion and shall pay any issue and other similar taxes that may be payable in respect of any issuance or delivery of any securities upon conversion of shares of Class A Common Stock pursuant to this Subsection IV.4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of securities in a name other than that in which the shares of Class A Common Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid. Upon conversion of each share of Class A Common Stock, the Corporation shall take all such actions as are necessary in order to ensure that the securities issuable with respect to such conversion shall be validly issued, fully paid and nonassessable, free and clear of all taxes, liens, charges and encumbrances with respect to the issuance thereof (other than restrictions on transfer under applicable federal and state securities law and liens, charges and encumbrances arising through the holder thereof).

4.4 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the effective date of this Certificate of Incorporation (the "***Effective Date***") effect a subdivision of the outstanding Common Stock (or other capital stock or securities at the lime issuable upon conversion of the Class A Common Stock) (by any stock split, stock dividend, recapitalization or otherwise), the applicable Conversion Ratio in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock (or other capital stock or securities at the lime issuable upon conversion of the Class A Common Stock) issuable on conversion of each share of Class A Common Stock shall be increased in proportion to such increase in the aggregate number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) outstanding. If the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock, the applicable Conversion Ratio in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) issuable on conversion of each share of Class A Common Stock shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) outstanding. Any adjustment under this Subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.5 [Reserved].

4.6 Adjustment for Merger or Reorganization, etc. If there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Class A Common Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsection IV.4.4), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Class A Common Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of the applicable Class A Common Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in Subsection IV.4 with respect to the rights and interests thereafter of the holders of the Class A Common Stock, to the end that the provisions set forth in Subsection IV.4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Ratio) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Class A Common Stock.

4.7 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Ratio pursuant to Subsection IV.4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than 10 days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the applicable series of Class A Common Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the applicable shares of Class A Common Stock are convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Class A Common Stock (but in any event not later than 10 days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the applicable Conversion Ratio then in effect, and (ii) the number of shares of Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) and the amount, if any, of other securities, cash or property which then would be received upon the conversion of Class A Common Stock.

4.8 Notice of Record Date. In the event, (a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Class A Common Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or (b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, then the Corporation will send or cause to be sent to the holders of the Class A Common Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, liquidation, dissolution or winding up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Class A Common Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, liquidation, dissolution or winding up, and the amount per share and character of such exchange applicable to the Class A Common Stock and the Common Stock. Such notice shall be sent at least 15 days prior to the record date or effective date for the event specified in such notice.

5. Waiver. Any of the rights, powers and other terms of the Class A Common Stock set forth herein may be waived on behalf of all holders of Class A Common Stock by the affirmative written consent or vote of the holders of at least seventy-five percent (75%) of the shares of Class A Common Stock then outstanding.

6. Notices. Any notice required or permitted by the provisions of this Article IV to be given to a holder of shares of Class A Common Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the DGCL, and shall be deemed sent upon such mailing or electronic transmission.

ARTICLE V

The number of directors of the Corporation shall be fixed from time to time as provided in the Bylaws.

ARTICLE VI

Unless and except that the Bylaws of the Corporation shall so require, the election of directors of the Corporation need not be by written ballot.

ARTICLE VII

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the Corporation is expressly authorized to make, alter and repeal the Bylaws of the Corporation, subject to the power of the stockholders of the Corporation to alter or repeal any bylaw whether adopted by them or otherwise.

ARTICLE VIII

To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no present or former director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Neither any amendment nor repeal of this Article, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article, shall eliminate or reduce the effect of this Article in respect of any matter occurring, or any cause of action, suit or claim that, but for this Article, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE IX

The Corporation will indemnify any person who was or is a party or is threatened to be made a party to, or testifies in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative in nature, by reason of the fact such person is or was a director, officer or employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by the DGCL, and the Corporation may adopt Bylaws or enter into agreements with any such person for the purpose of providing for such indemnification.

ARTICLE X

Subject to the provisions of this Certificate of Incorporation, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, and other provisions authorized by the DGCL and the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

ARTICLE XI

The Corporation is to have perpetual existence.

ARTICLE XII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of this Corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE XIII

The Corporation elects not to be governed by Section 203 of the DGCL. To the fullest extent permitted by section 122(17) of the DGCL, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in any Excluded Opportunity, or in being offered an opportunity to receive notice of or participate in any Excluded Opportunity, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so and no such individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, estate, unincorporated organization, governmental or regulatory body or other entity ("***Person***") shall be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Person pursues or acquires such Excluded Opportunity, directs such Excluded Opportunity to another Person or fails to present such Excluded Opportunity, or information regarding such Excluded Opportunity, to the Corporation or its subsidiaries. An "***Excluded Opportunity***" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Class A Common Stock or any affiliate, partner, member, director, stockholder, employee, agent or other related person of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "***Covered Persons***"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation. Any Person purchasing or otherwise acquiring any interest in any shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XIII. Neither the alteration, amendment or repeal of this Article XIII nor the adoption of any provision of this Certificate of Incorporation inconsistent with thisArticle XIII shall eliminate or reduce the effect of this Article XIII in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this Article XIII, would accrue or arise, prior to such alteration, amendment, repeal or adoption.

ARTICLE XIV

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware, shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or to the Corporation's stockholders; (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or its Bylaws (as either may be amended from time to time); or (iv) any action asserting a claim governed by the internal affairs doctrine. If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any of the Corporation's stockholders, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such stockholder in any such

action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder. Furthermore, unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, and/or the Securities Exchange Act of 1934, as amended.

* * *

The undersigned hereby acknowledges that the foregoing Amended and Restated Certificate of Incorporation is his act and deed.

Dated: August [ ], 2021

Claude Maraoui
President

Amended and Restated
BYLAWS
OF
JOURNEY MEDICAL CORPORATION

I. CORPORATE OFFICES

1.1 Registered Office

The registered office of the corporation shall be in the City of Dover County of Kent, State of Delaware. The name of the registered agent of the corporation at such location is Incorporating Services, Ltd.

1.2 Other Offices

The board of directors may at any time establish other offices at any place or places where the corporation is qualified to do business.

II. MEETINGS OF STOCKHOLDERS

2.1 Place of Meetings

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the board of directors. The board of directors may, in its sole discretion, determine that a meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 of the General Corporation Law of Delaware.

If authorized by the board of directors in its sole discretion, and subject to such guidelines and procedures, as the board of directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication, participate in a meeting of stockholders, be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

2.2 Annual Meeting

The annual meeting of stockholders shall be held each year on a date and at a time designated by the board of directors, In the absence of such designation, the annual meeting of stockholders shall be held on the third Monday in April in each year at 1:00 p.m. However, if such day falls on a legal holiday, then the meeting shall be held at the same time and place on the next succeeding full business day. At the meeting, directors shall be elected and any other proper business may be transacted.

2.3 Special Meeting

Special meetings of the stockholders may be called, at any time for any purpose or purposes, by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or these bylaws, or by such person or persons duly designated by the board of directors whose powers and authority, as expressly provided in a resolution of the board of directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons.

2.4 Notice of Stockholders' Meetings

(a) Except to the extent otherwise required by law, all notices of meetings with stockholders shall be in writing and shall be sent or otherwise given in accordance with Section 2.5 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting. The notice shall specify the place, if any, date, and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation shall also be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation, Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to recognize such revocation shall not invalidate any meeting or other action.

(c) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any stockholder who fails to object in writing to the corporation, within sixty (60) days of having been given written notice by the corporation of its intention to send the single notice permitted under this subsection 2.4(e), shall be deemed to have consented to receiving such single written notice.

(d) Sections 2.4(b) and (c) shall not apply to any notice given to stockholders under Sections 164 (notice of sale of shares of stockholder who failed to pay an installment or call on stock not fully paid), 296 (notice of disputed claims relating to insolvent corporations), 311 (notice of meeting of stockholders to revoke dissolution of corporation), 312 (notice of meeting of stockholders of corporation whose certificate of incorporation has been renewed or revived) and 324 (notice when stock has been attached as required for sale upon execution process) of the General Corporation Law of Delaware.

2.5 Manner of Giving Notice; Affidavit of Notice

(a) Written notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the corporation. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(b) Notice given pursuant to this Section 2.5(b) shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary, an assistant secretary or the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 Quorum

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum is not present or represented at any meeting of the stockholders, then the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 Adjourned Meeting; Notice

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time and place thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

2.8 Voting

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to the provisions of Sections 217 and 218 of the General Corporation Law of Delaware (relating to voting rights of fiduciaries, pledgors and joint owners of stock and to voting trusts and other voting agreements).

Except as otherwise provided in the certificate of incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder.

2.9 Waiver of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver or any waiver by electronic transmission of notice unless so required by the certificate of incorporation or these bylaws.

2.10 Stockholder Action by Written Consent Without a Meeting

Unless otherwise provided in the certificate of incorporation, any action required by the General Corporation Law of Delaware to be taken at any annual or special meeting of stockholders of a corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder, proxyholder or other person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 2,10, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder, proxyholder or other authorized person or persons, and (b) the date on which such stockholder, proxyholder or other authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall have been delivered to the corporation by delivery to its registered office in this State, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Prompt notice of the taking of the corporate action without a meeting by written consent shall be given to those stockholders who have not consented in writing. If the action that is consented to is such as would have required the filing of a certificate under any section of the General Corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

2.11 Record Date for Stockholder Notice; Voting; Giving Consents

In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to

exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the board of directors may fix, in advance, a record date that shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action.

If the board of directors does not so fix a record date:

(a) the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held;

(b) the record date for determining stockholders entitled to express consent to corporate action in writing without a meeting, when no prior action by the board of directors is necessary, shall be the day on which the first written consent is expressed; and

(c) the record date for determining stockholders for any other purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the board of directors may fix a new record date for the adjourned meeting.

2.12 Proxies

Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for him by a written proxy, signed by the stockholder and filed with the secretary of the corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be deemed signed if the stockholder's name is placed on the proxy (whether by manual signature, typewriting, telegraphic transmission or otherwise) by the stockholder or the stockholder's attorney-in-fact. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212(e) of the General Corporation Law of Delaware.

2.13 List of Stockholders Entitled to Vote

The officer who has charge of the stock ledger of a corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 Stockholder Proposals

Effective upon the corporation's initial public offering of stock under the Securities Act of 1933, as amended, any stockholder wishing to bring any other business before a meeting of stockholders, including, but not limited to, the nomination of persons for election as directors, must provide notice to the corporation not more than ninety (90) and not less than fifty (50) days before the meeting in writing by registered mail, return receipt requested, of the business to be presented by the stockholders at the stockholders' meeting, Any such notice shall set forth the following as to each matter the stockholder proposes to bring before the meeting: (a) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting and, if such business includes a proposal to amend the bylaws of the corporation, the language of the proposed amendment; (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business; (c) the class and number of shares of the corporation that are beneficially owned by such stockholder; (d) a representation that the stockholder is a holder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business; and (e) any material interest of the stockholder in such business. Notwithstanding the foregoing provisions of this Section 2.14, a stockholder shall also comply with all applicable requirements of all applicable laws, rules and regulations, including, but not limited to, the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, with respect to the matters set forth in this Section 2.14. In the absence of such notice to the corporation meeting the above requirements, a stockholder shall not be entitled to present any business at any meeting of stockholders.

III. DIRECTORS

3.1 Powers

Subject to the provisions of the General Corporation Law of Delaware and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board of directors.

3.2 Number of Directors

The number of directors constituting the board of directors shall be not more than nine (9) but not less than one (1), and may be fixed or changed, within this minimum and maximum, by the stockholders or the board of directors. The number of directors constituting the initial board of directors shall be fixed at one (1).

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors

Except as provided in Sections 3.4 and 3.18 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws, wherein other qualifications for directors may be prescribed. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

Each director shall be a natural person.

Elections of directors need not be by written ballot.

3.4 Resignation and Vacancies

Any director may resign at any time upon notice given in writing or electronic transmission to the corporation. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this Section 3.4 in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(a) vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director; and

(b) whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the General Corporation Law of Delaware.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%)of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the General Corporation Law of Delaware as far as applicable.

3.5 Place of Meetings; Meetings by Telephone

The board of directors of the corporation may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the board of directors, or any committee designated by the board of directors, may participate in a meeting of the board of directors, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 First Meetings

The first meeting of each newly elected board of directors shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order legally to constitute the meeting, provided a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected board of directors, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the board of directors, or as shall be specified in a written waiver signed by all of the directors.

3.7 Regular Meetings

Regular meetings of the board of directors may be held without notice at such time and at such place as shall from time to time be determined by the board of directors.

3.8 Special Meetings; Notice

Special meetings of the board of directors for any purpose or purposes may be called at any time by the chairman of the board of directors, the president, any vice president, the secretary or any director.

Notice of the time and place of special meetings shall be delivered either personally or by mail, telex, facsimile, telephone or electronic transmission to each director, addressed to each director at such director's address and/or phone number and/or electronic transmission address as it is shown on the records of the corporation. If the notice is mailed, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. If the notice is delivered personally or by telex, facsimile, telephone or electronic transmission, it shall be delivered by telephone or transmitted at least forty-eight (48) hours before the time of the holding of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The notice need not specify the purpose or the place of the meeting, if the meeting is to be held at the principal executive office of the corporation. Notice may be delivered by any person entitled to call a special meeting or by an agent of such person.

3.9 Quorum

At all meetings of the board of directors, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board of directors, except as otherwise specifically provided by statute or by the certificate of incorporation, If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 Waiver Of Notice

Whenever notice is required to be given under any provision of the General Corporation Law of Delaware or of the certificate of incorporation or these bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice, Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or meeting of a committee of directors, need be specified in any written waiver of notice unless so required by the certificate of incorporation or these bylaws.

3.11 Adjourned Meeting; Notice

If a quorum is not present at any meeting of the board of directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.12 Board Action by Written Consent Without a Meeting

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board of directors or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board of directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.13 Fees and Compensation of Directors

Unless otherwise restricted by the certificate of incorporation or these bylaws, the board of directors shall have the authority to fix the compensation of directors.

3.14 Removal of Directors

Unless otherwise restricted by statute, by the certificate of incorporation or by these bylaws, any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, that, whenever the holders of any class or classes of stock, or series thereof, are entitled to elect one or more directors by the provisions of the certificate of incorporation, removal of any directors elected by such class or classes of stock, or series thereof, shall be by the holders of a majority of the shares of such class or classes of stock, or series of stock, then entitled to vote at an election of directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

3.15 Chairman of the Board of Directors

The corporation may also have, at the discretion of the board of directors, a chairman of the board of directors. The chairman of the board of directors shall, if such a person is elected, preside at the meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the board of directors, or as may be prescribed by these bylaws.

IV. COMMITTEES

4.1 Committees of Directors

The board of directors may, by resolution passed by a majority of the whole board of directors, designate one or more committees, with each committee to consist of one or more of the directors of the corporation. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the board of directors or in the bylaws of the corporation, shall have and may exercise all the powers and authority of the board of directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the General Corporation Law of Delaware to be submitted to stockholders for approval, or (ii) adopt, amend or repeal any bylaws of the corporation.

4.2 Committee Minutes

Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

4.3 Meetings and Action of Committees

Meetings and actions of committees shall be governed by, and be held and taken in accordance with, the provisions of Article III of these bylaws, Section 3.5 (place of meetings and meetings by telephone), Section 3.7 (regular meetings), Section 3.8 (special meetings and notice), Section 3,9 (quorum), Section 3.10 (waiver of notice), Section 3.11 (adjourned meeting and notice), and Section 3.12 (board action by written consent without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the board of directors and its members; provided, however, that the time of regular meetings of committees may also be called by resolution of the board of directors and that notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The board of directors may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

V. OFFICERS

5.1 Officers

The officers of the corporation shall be a chief executive officer, a president, one or more vice presidents, a secretary and a treasurer. The corporation may also have, at the discretion of the board of directors, a chairman of the board, one or more assistant vice presidents, assistant secretaries, assistant treasurers and any such other officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws. Any number of offices may be held by the same person.

5.2 Election of Officers

The officers of the corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 of these bylaws, shall be chosen by the board of directors, subject to the rights, if any, of an officer under any contract of employment.

5.3 Subordinate Officers

The board of directors may appoint, or empower the president to appoint, such other officers and agents as the business of the corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are provided in these bylaws or as the board of directors may from time to time determine.

5.4 Removal and Resignation of Officers

Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the board of directors at any regular or special meeting of the board of directors or by any officer upon whom such power of removal may be conferred by the board of directors.

Any officer may resign at any time by giving written notice to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice; and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices

Any vacancy occurring in any office of the corporation shall be filled by the board of directors.

5.6 Chairman of the Board

The chairman of the board, if such an officer be elected, shall, if present, preside at meetings of the board of directors and exercise and perform such other powers and duties as may from time to time be assigned to him by the board of directors or as may be prescribed by these bylaws. If there is no chief executive officer, then the chairman of the board shall also be the chief executive officer of the corporation and shall have the powers and duties prescribed in Section 5.7 of these bylaws. The chairman of the board shall be chosen by the board of directors.

5.7 Chief Executive Officer

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board, the chief executive officer of the corporation shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. The chief executive officer shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board, at all meetings of the board of directors at which he or she is present. The chief executive officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws.

5.8 President

Subject to such supervisory powers, if any, as may be given by the board of directors to the chairman of the board or the chief executive officer, if there be such officers, the president shall, subject to the control of the board of directors, have general supervision, direction and control of the business and the officers of the corporation. In the absence or nonexistence of the chief executive officer, he or she shall preside at all meetings of the stockholders and, in the absence or nonexistence of a chairman of the board and chief executive officer, at all meetings of the board of directors at which he or she is present. He or she shall have the general powers and duties of management usually vested in the office of president of a corporation and shall have such other powers and duties as may be prescribed by the board of directors or these bylaws. The board of directors may provide in their discretion that the offices of president and chief executive officer may be held by the same person.

5.9 Vice Presidents

In the absence or disability of the chief executive officer and president, the vice presidents, if any, in order of their rank as fixed by the board of directors or, if not ranked, a vice president designated by the board of directors, shall perform all the duties of the president and when so acting shall have all the powers of, and be subject to all the restrictions upon, the president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them by the board of directors, these bylaws, the president or the chairman of the board.

5.10 Secretary

The secretary or an agent of the corporation shall keep or cause to be kept, at the principal executive office of the corporation or such other place as the board of directors may direct, a book of minutes of all meetings and actions of directors, committees of directors and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings and the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the corporation or at the office of the corporation's transfer agent or registrar, as determined by resolution of the board of directors, a share register, or a duplicate share register, showing the names of all stockholders and their addresses, the number and classes of shares held by each, the number and date of certificates evidencing such shares, and the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the board of directors required to be given by law or by these bylaws. The secretary shall keep the seal of the corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the board of directors or by these bylaws.

5.11 Treasurer

The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all money and other valuables in the name and to the credit of the corporation with such depositaries as may be designated by the board of directors. The treasurer shall disburse the funds of the corporation as may be ordered by the board of directors, shall render to the president and directors, whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the corporation, and shall have such other powers and perform such other duties as may be prescribed by the board of directors or these bylaws.

5.12 Assistant Secretary

The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the stockholders or board of directors (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors or the stockholders may from time to time prescribe.

5.13 Representation of Shares of Other Corporations

The chairman of the board, the chief executive officer, the president, any vice president, the treasurer, the secretary or assistant secretary of this corporation, or any other person authorized by the board of directors or the chief executive officer, president or a vice president, is authorized to vote, represent, and exercise on behalf of this corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of this corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.14 Authority and Duties of Officers

In addition to the foregoing authority and duties, all officers of the corporation shall respectively have such authority and perform such duties in the management of the business of the corporation as may be designated from time to time by the board of directors or the stockholders.

VI. INDEMNITY

6.1 Indemnification of Directors and Officers

The corporation shall, to the maximum extent and in the manner permitted by the General Corporation Law of Delaware, indemnify each of its directors and Officers against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.1, a director or Officer of the corporation includes any person (a) who is or was a director or Officer of the corporation, (b) who is or was serving at the request of the corporation as a director, Officer manager, member, partner, trustee, or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was a director or Officer of a corporation that was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation. Such indemnification shall be a contract right and shall include the right to receive payment of any expenses incurred by the indemnitee in connection with any proceeding in advance of its final disposition, consistent with the provisions of applicable law as then in effect. The right of indemnification provided in this Section 6.1 shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Section 6.1 shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Section 6.1 and shall be applicable to proceedings commenced or continuing after the adoption of this Section 6.1, whether arising from acts or omissions occurring before or after such adoption. In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Section 6.1.

(a) Advancement of Expenses. All reasonable expenses incurred by or on behalf of the indemnitee in connection with any proceeding shall be advanced to the indemnitee by the corporation within twenty (20) days after the receipt by the corporation of a statement or statements from the indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such proceeding, unless, prior to the expiration of such twenty-day period, the board of directors shall unanimously (except for the vote, if applicable, of the indemnitee) determine that the indemnitee has no reasonable likelihood of being entitled to indemnification pursuant to this Section 6.1. Such statement or statements shall reasonably evidence the expenses incurred by the indemnitee and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the indemnitee to repay the amounts advanced if it should ultimately be determined that the indemnitee is not entitled to be indemnified against such expenses pursuant to this Section 6.1.

(b) Procedure for Determination of Entitlement to Indemnification.

(i) To obtain indemnification under this Section 6.1, an indemnitee shall submit to the secretary of the corporation a written request, including such documentation and information as is reasonably available to the indemnitee and reasonably necessary to determine whether and to what extent the indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the indemnitee's entitlement to indemnification shall be made not later than sixty (60) days after receipt by the corporation of the written request for indemnification together with the Supporting Documentation. The secretary of the corporation shall, promptly upon receipt of such a request for indemnification, advise the board of directors in writing that the indemnitee has requested indemnification, whereupon the corporation shall provide such indemnification, including without limitation advancement of expenses, so long as the indemnitee is legally entitled thereto in accordance with applicable law.

(ii) The indemnitee's entitlement to indemnification under this Section 6.1 shall be determined in one of the following ways: (A) by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum of the board of directors; (B) by a committee of such Disinterested Directors, even though less than a quorum of the board of directors; (C) by a written opinion of Independent Counsel (as hereinafter defined) if (x) a Change of Control (as hereinafter defined) shall have occurred and the indemnitee so requests or (y) a quorum of the board of directors consisting of Disinterested Directors is not obtainable or, even if obtainable, a majority of such Disinterested Directors so directs; (D) by the stockholders of the corporation (but only if a majority of the Disinterested Directors, if they constitute a quorum of the board of directors, presents the issue of entitlement to indemnification to the stockholders for their determination); or (E) as provided in paragraph (c)

below,

(iii) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to paragraph (b)(ii) above, a majority of the Disinterested Directors shall select the Independent Counsel, but only an Independent Counsel to which the indemnitee does not reasonably object; provided, however, that if a Change of Control shall have occurred, the indemnitee shall select such Independent Counsel, but only an Independent Counsel to which the board of directors does not reasonably object.

(iv) The only basis upon which a finding that indemnification may not be made is that such indemnification is prohibited by law.

(c) Presumptions and Effect of Certain Proceedings. Except as otherwise expressly provided in this Section 6.1, if a Change of Control shall have occurred, the indemnitee shall be presumed to be entitled to indemnification under this Section 6,1 upon submission of a request for Indemnification together with the Supporting Documentation in accordance with paragraph (b)(i), and thereafter the corporation shall have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under paragraph (b)(ii) above to determine entitlement to indemnification shall not have been appointed or shall not have made a determination within sixty (60) days after receipt by the corporation of the request therefor together with the Supporting Documentation, the indemnitee shall be deemed to be entitled to indemnification and the indemnitee shall be entitled to such indemnification unless (A) the indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. The termination of any proceeding described in this Section 6.1, or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, adversely affect the right of the indemnitee to indemnification or create a presumption that the indemnitee did not act in good faith and in a manner that the indemnitee reasonably believed to be in or not opposed to the best interests of the corporation or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe that the indemnitee's conduct was unlawful.

(d) Remedies of Indemnitee.

(i) In the event that a determination is made pursuant to paragraph (b)(ii) that the indemnitee is not entitled to indemnification under this Section 6.1: (A) the indemnitee shall be entitled to seek an adjudication of his or her entitlement to such indemnification either, at the indemnitee's sole option, in (x) an appropriate court of the State of Delaware or any other court of competent jurisdiction, or (y) an arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association; (B) any such judicial proceeding or arbitration shall be *de novo* and the indemnitee shall not be prejudiced by reason of such adverse determination; and (C) in any such judicial proceeding or arbitration the corporation shall have the burden of proving that the indemnitee is not entitled to indemnification under this Section 6.1.

(ii) If a determination shall have been made or is deemed to have been made, pursuant to paragraph (b)(ii) or (iii), that the indemnitee is entitled to indemnification, the corporation shall be obligated to pay the amounts constituting such indemnification within five (5) days after such determination has been made or is deemed to have been made and shall be conclusively bound by such determination unless (A) the indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation, or (B) such indemnification is prohibited by law. In the event that: (X) advancement of expenses is not timely made pursuant to paragraph (a); or (Y) payment of indemnification is not made within five (5) days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to paragraph (b)(ii) or (iii), the indemnitee shall be entitled to seek judicial enforcement of the corporation's obligation to pay to the indemnitee such advancement of expenses or indemnification. Notwithstanding the foregoing, the corporation may bring an action, in an appropriate court in the State of Delaware or any other court of competent jurisdiction, contesting the right of the indemnitee to receive indemnification hereunder due to the occurrence of an event described in subclause (A) or (B) of this clause (ii) (a "Disqualifying Event"); provided, however, that in any such action the corporation shall have the burden of proving the occurrence of such Disqualifying Event.

(iii) The corporation shall be precluded from asserting in any judicial proceedings or arbitration commenced pursuant to this paragraph (d) that the procedures and presumptions of this Section 6.1 are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the corporation is bound by all the provisions of this Section 6.1.

(iv) In the event that the indemnitee, pursuant to this paragraph (d), seeks a judicial adjudication of or an award in arbitration to enforce his or her rights under, or to recover damages for breach of, this Section 6.1, the indemnitee shall be entitled to recover from the corporation, and shall be indemnified by the corporation against, any expenses actually and reasonably incurred by the indemnitee if the indemnitee prevails in such judicial adjudication or arbitration. If it shall be determined in such judicial adjudication or arbitration that the indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses incurred by the indemnitee in connection with such judicial adjudication shall be prorated accordingly.

(e) Definitions. For purposes of this Section 6.1:

(i) "Change in Control" means a change in control of the corporation of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the "Act"), whether or not the corporation is then subject to such reporting requirement; provided that, without limitation, such a change in control shall be deemed to have occurred if (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Act) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the corporation representing twenty-five percent (25%) or more of the combined voting power of the corporation's then outstanding securities without the prior approval of at least a majority of the members of the board of directors in office immediately prior to such acquisition; (ii) the corporation is a party to a merger, consolidation, sale of assets or other reorganization, or a proxy contest, as a consequence of which members of the board of directors in office immediately prior to such transaction or event constitute less than a majority of the board of directors thereafter; or (iii) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted the board of directors (including for this purpose any new director whose election or nomination for election by the corporation's stockholders was approved by a vote of at least a majority of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the board of directors;

(ii) "Disinterested Director" means a director of the corporation who is not a party to the proceeding in respect of which indemnification is sought by the indemnitee; and

(iii) "Independent Counsel" means a law firm or a member of a law firm that neither presently is, nor in the past five (5) years has been, retained to represent: (A) the corporation or the indemnitee in any matter material to either such party or (B) any other party to the proceeding giving rise to a claim for indemnification under this Section 6.1. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing under such persons, relevant jurisdiction of practice, would have a conflict of interest in representing either the corporation or the indemnitee in an action to determine the indemnitee's rights under this Section 6.1.

(f) Invalidity; Severability; Interpretation. If any provision or provisions of this Section 6.1 shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Section 6.1 (including, without limitation, all portions of any paragraph of this Section 6.1 containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid; illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable. Reference herein to laws, regulations or agencies shall be deemed to include all amendments thereof, substitutions therefor and successors thereto.

6.2 Indemnification of Others

The corporation shall have the power, to the extent and in the manner permitted by the General Corporation Law of Delaware, to indemnify each of its officers, employees and agents (other than directors) against expenses (including attorneys' fees), judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with any proceeding, arising by reason of the fact that such person is or was an agent of the corporation. For purposes of this Section 6.2, an officer, employee or agent of the corporation (other than a director) includes any person (a) who is or was an employee or agent of the corporation, (b) who is or was serving at the request of the corporation as a director, officer, manager, member, partner, trustee, employee or other agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, or (c) who was an employee or agent of a corporation that was a predecessor corporation of the corporation or of another enterprise at the request of such predecessor corporation.

6.3 Insurance

The corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, manager, member, partner, trustee, employee or other agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of the General Corporation Law of Delaware.

VII. RECORDS AND REPORTS

7.1 Maintenance and Inspection of Records

The corporation shall, either at its principal executive office or at such place or places as designated by the board of directors, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation's stock ledger, a list of its stockholders and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder, In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in Delaware or at its principal place of business.

Any records maintained by a corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. Any corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the certificate of incorporation, these bylaws or the General Corporation Law of Delaware. When records are kept in such manner, a clearly legible paper from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

7.2 Inspection by Directors

Any director shall have the right to examine the corporation's stock ledger, a list of its stockholders and its other books and records for a purpose reasonably related to his or her position as a director. The Court of Chancery is hereby vested with the exclusive jurisdiction to determine whether a director is entitled to the inspection sought. The court may summarily order the corporation to permit the director to inspect any and all books and records, the stock ledger and the stock list and to make copies or extracts therefrom. The burden of proof shall be upon the corporation to establish that the inspection such director seeks is for an improper purpose. The court may, in its discretion, prescribe any limitations or conditions with reference to the inspection, or award such other and further relief as the court may deem just and proper.

7.3 Annual Statement to Stockholders

The board of directors shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the corporation.

VIII. GENERAL MATTERS

8.1 Checks

From time to time, the board of directors shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the corporation, and only the persons so authorized shall sign or endorse those instruments.

8.2 Execution of Corporate Contracts and Instruments

The board of directors, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any

instrument in the name of and on behalf of the corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the board of directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

8.3 Stock Certificates; Partly Paid Shares

The shares of the corporation shall be represented by certificates, provided that the board of directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the corporation by the chairman or vice-chairman of the board of directors, or the president or vice president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue. The corporation shall not have power to issue a certificate in bearer form.

The corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, and upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

8.4 Special Designation on Certificates

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in

Section 202 of the General Corporation Law of Delaware, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

8.5 Lost Certificates

Except as provided in this Section 8.5, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or his or her legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

8.6 Construction; Definitions

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term “person” includes both a corporation and a natural person.

8.7 Dividends

The directors of the corporation, subject to any rights or restrictions contained in the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock pursuant to the General Corporation Law of Delaware. Dividends may be paid in cash, in property or in shares of the corporation’s capital stock.

The directors of the corporation may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve, Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the corporation and meeting contingencies,

8.8 Fiscal Year

The fiscal year of the corporation shall be fixed by resolution of the board of directors and may be changed by the board of directors.

8.9 Seal

The corporation may adopt a corporate seal which may be altered as desired, and may use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

8.10 Transfer of Stock

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction in its books.

8.11 Stock Transfer Agreements and Restrictions

The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware.

8.12 Electronic Transmission

For purposes of these bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process,

IX. AMENDMENTS

The original or other bylaws of the corporation may be adopted, amended or repealed by the stockholders entitled to vote; provided, however, that the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

X. DISSOLUTION

If it should be deemed advisable in the judgment of the board of directors of the corporation that the corporation should be dissolved, the board, after the adoption of a resolution to that effect by a majority of the whole board at any meeting called for that purpose, shall cause notice to be mailed to each stockholder entitled to vote thereon of the adoption of the resolution and of a meeting of stockholders to take action upon the resolution.

At the meeting a vote shall be taken for and against the proposed dissolution. If a majority of the outstanding stock of the corporation entitled to vote thereon votes for the proposed dissolution, then a certificate stating, among other things, that the dissolution has been authorized in accordance with the provisions of Section 275 of the General Corporation Law of Delaware and setting forth the names and residences of the directors and officers shall be executed, acknowledged, and filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such certificate's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved.

Whenever all the stockholders entitled to vote on a dissolution consent in writing, either in person or by duly authorized attorney, to a dissolution, no meeting of directors or stockholders shall be necessary. The consent shall be filed and shall become effective in accordance with Section 103 of the General Corporation Law of Delaware. Upon such consent's becoming effective in accordance with Section 103 of the General Corporation Law of Delaware, the corporation shall be dissolved. If the consent is signed by an attorney, then the original power of attorney or a photocopy thereof shall be attached to and filed with the consent. The consent filed with the Secretary of State shall have attached to it the affidavit of the secretary or some other officer of the corporation stating that the consent has been signed by or on behalf of all the stockholders entitled to vote on a dissolution; in addition, there shall be attached to the consent a certification by the secretary or some other officer of the corporation setting forth the names and residences of the directors and officers of the corporation.

XI. CUSTODIAN

11.1 Appointment of a Custodian in Certain Cases

The Court of Chancery, upon application of any stockholder, may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers, of and for the corporation when:

(a) at any meeting held for the election of directors the stockholders are so divided that they have failed to elect successors to directors whose terms have expired or would have expired upon qualification of their successors;

(b) the business of the corporation is suffering or is threatened with irreparable injury because the directors are so divided respecting the management of the affairs of the corporation that the required vote for action by the board of directors cannot be obtained and the stockholders are unable to terminate this division; or

(c) the corporation has abandoned its business and has failed within a reasonable time to take steps to dissolve, liquidate or distribute its assets.

11.2 Duties of Custodian

The custodian shall have all the powers and title of a receiver appointed under Section 291 of the General Corporation Law of Delaware, but the authority of the custodian shall be to continue the business of the corporation and not to liquidate its affairs and distribute its assets, except when the Court of Chancery otherwise orders and except in cases arising under Sections 226(a)(3) or 352(a)(2) of the General Corporation Law of Delaware.

JOURNEY MEDICAL CORPORATION

2015 STOCK PLAN

1. Purpose. This Journey Medical Corporation 2015 Stock Plan (the "***Plan***") is intended to provide incentives:

(a) to employees of Journey Medical Corporation (the "***Company***"), or its parent (if any) or any of its present or future subsidiaries (collectively, "***Related Corporations***"), by providing them with opportunities to purchase Common Stock (as defined below) of the Company pursuant to options granted hereunder that qualify as "incentive stock options" ("***ISOs***") under Section 422 of the Internal Revenue Code of 1986, as amended, or any successor statute (the "***Code***");

(b) to employees, directors and consultants of the Company and Related Corporations by providing them with opportunities to purchase Common Stock of the Company pursuant to options granted hereunder that do not qualify as ISOs ("***Nonstatutory Stock Options***" or "***NSOs***");

(c) to employees, directors and consultants of the Company and Related Corporations by providing them with bonus awards of Common Stock of the Company ("***Stock Bonuses***"); and

(d) to employees, directors and consultants of the Company and Related Corporations by providing them with opportunities to make direct purchases of Common Stock of the Company ("***Purchase Rights***").

Both ISOs and NSOs are referred to hereafter individually as "Options", and Options, Stock Bonuses and Purchase Rights are referred to hereafter collectively as "Stock Rights". As used herein, the terms "parent" and "subsidiary" mean "parent corporation" and "subsidiary corporation", respectively, as those terms are defined in Section 424 of the Code.

2. Administration of the Plan.

(a) The Plan shall be administered by (i) the Board of Directors of the Company (the "***Board***") or (ii) a committee consisting of directors or other persons appointed by the Board (the "***Committee***"). The appointment of the members of, and the delegation of powers to, the Committee by the Board shall be consistent with applicable laws and regulations (including, without limitation, the Code, Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), or any successor rule thereto ("***Rule 16b-3***"), and any applicable state law (collectively, the "***Applicable Laws***"). Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time, the Board may increase the size of the Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies, however caused, and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws.

(b) Subject to ratification of the grant or authorization of each Stock Right by the Board (if so required by an Applicable Law), and subject to the terms of the Plan, the Committee shall have the authority, in its discretion, to:

(i) determine the employees of the Company and Related Corporations (from among the class of employees eligible under Section 3 to receive ISOs) to whom ISOs may be granted, and to determine (from among the classes of individuals and entities eligible under Section 3 to receive NSOs, Stock Bonuses and Purchase Rights) to whom NSOs, Stock Bonuses and Purchase Rights may be granted;

(ii) determine the time or times at which Options, Stock Bonuses or Purchase Rights may be granted (which may be based on performance criteria);

(iii) determine the number of shares of Common Stock subject to any Stock Right granted by the Committee;

(iv) determine the option price of shares subject to each Option, which price shall not be less than the minimum price specified in Section 6 hereof, as appropriate, and the purchase price of shares subject to each Purchase Right and to determine the form of consideration to be paid to the Company for exercise of such Option or purchase of shares with respect to a Purchase Right;

(v) determine whether each Option granted shall be an ISO or NSO;

(vi) determine (subject to Section 7) the time or times when each Option shall become exercisable and the duration of the exercise period;

(vii) determine whether restrictions such as repurchase options are to be imposed on shares subject to Options, Stock Bonuses and Purchase Rights and the nature of such restrictions, if any;

(viii) approve forms of agreement for use under the Plan;

(ix) determine the Fair Market Value (as defined in Section 6(d) below) of a Stock Right or the Common Stock underlying a Stock Right;

(x) accelerate vesting on any Stock Right or to waive any forfeiture restrictions, or to waive any other limitation or restriction with respect to a Stock Right;

(xi) reduce the exercise price of any Stock Right if the Fair Market Value of the Common Stock covered by such Stock Right shall have declined since the date the Stock Right was granted;

(xii) institute a program whereby outstanding Options can be surrendered in exchange for Options with a lower exercise price;

(xiii) modify or amend each Stock Right (subject to Section 8(d) of the Plan) including the discretionary authority to extend the post-termination exercisability period of Stock Rights longer than is otherwise provided for by terms of the Plan or the Stock Right;

(xiv) construe and interpret the Plan and Stock Rights granted hereunder;

(xv) prescribe and rescind rules and regulations relating to the Plan; and

(xvi) make all other determinations necessary or advisable for the administration of the Plan.

The interpretation and construction by the Committee of any provisions of the Plan or of any Stock Right granted under it shall be final unless otherwise determined by the Board. No member of the Board or the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any Stock Right granted under it.

(c) The Committee may select one of its members as its chairman, and shall hold meetings at such times and places as it may determine. Acts by a majority of the Committee, approved in person at a meeting or in writing, shall be the valid acts of the Committee.

(d) All references in this Plan to the Committee shall mean the Board if no Committee has been appointed.

(e) Those provisions of the Plan that make express reference to Rule 16b-3 shall apply to the Company only at such time as the Company's Common Stock is registered under the Exchange Act, and then only to such persons as are required to file reports under Section 16(a) of the Exchange Act (a "***Reporting Person***").

(f) To the extent that Stock Rights are to be qualified as "performance-based" compensation within the meaning of Section 162(m) of the Code, the Plan shall be administered by a committee consisting of two or more "outside directors" as determined under Section 162(m) of the Code (if the Company has two or more outside directors).

3. Eligible Employees and Others.

(a) Eligibility. ISOs may be granted to any employee of the Company or any Related Corporation. Those officers of the Company who are not employees may not be granted ISOs under the Plan. NSOs, Stock Bonuses and Purchase Rights may be granted to any director, employee or consultant of the Company or any Related Corporation. Granting of any Stock Right to any individual or entity shall neither entitle that individual or entity to, nor disqualify him or her from, participation in any other grant of Stock Rights.

(b) Special Rule for Grant of Stock Rights to Reporting Persons. The selection of a director or an officer who is a Reporting Person (as the terms "director" and "officer" are defined for purposes of Rule 16b-3) as a recipient of a Stock Right, the timing of the Stock Right grant, the exercise price, if any, of the Stock Right and the number of shares subject to the Stock Right shall be determined either (i) by the Board, or (ii) by a committee of the Board that is composed solely of two or more Non-Employee Directors having full authority to act in the matter. For the purposes of the Plan, a director shall be deemed to be a "Non-Employee Director" only if such person is defined as such under Rule 16b-3(b)(3), as interpreted from time to time.

(c) Annual Limitation for Employees. To the extent the Company is subject to Section 162(m) of the Code, no employee shall be eligible to be granted during any calendar year Stock Rights covering more than eighty percent (80%) of the total shares of Common Stock authorized for issuance under the Plan as set forth in Section 4.

4. Stock. The stock subject to Stock Rights shall be authorized but unissued shares of Common Stock of the Company, par value 0.0001 per share, or such shares of the Company's capital stock into which such class of shares may be converted pursuant to any reorganization, recapitalization, merger, consolidation or the like (the "***Common Stock***"), or shares of Common Stock reacquired by the Company in any manner. The aggregate number of shares that may be issued pursuant to the Plan is 3,000,000 shares of Common Stock, subject to adjustment as provided herein. Any such shares may be issued as ISOs, NSOs or Stock Bonuses, or to persons or entities making purchases pursuant to Purchase Rights, so long as the number of shares so issued does not exceed such aggregate number, as adjusted. If any Option granted under the Plan shall expire or terminate for any reason without having been exercised in full or shall cease for any reason to be exercisable in whole or in part, or if the Company shall reacquire any shares issued pursuant to Stock Rights, the unpurchased shares subject to such Options and any shares so reacquired by the Company shall again be available for grants of Stock Rights under the Plan. Shares of Common Stock which are withheld to pay the exercise price of an Option and/or any related withholding obligations shall not be available for issuance under the Plan.

5. Granting of Stock Rights. Stock Rights may be granted under the Plan at any time after the Effective Date, as set forth in Section 16, and prior to 10 years thereafter. The date of grant of a Stock Right under the Plan will be the date specified by the Committee at the time it grants the Stock Right; provided, however, that such date shall not be prior to the date on which the Committee acts.

6. Minimum Price; ISO Limitations.

(a) The price per share specified in the agreement relating to each NSO, Stock Bonus or Purchase Right granted under the Plan shall be established by the Committee, taking into account any noncash consideration to be received by the Company from the recipient of Stock Rights.

(b) The price per share specified in the agreement relating to each ISO granted under the Plan shall not be less than the Fair Market Value per share of Common Stock on the date of such grant. In the case of an ISO to be granted to an employee owning stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Related Corporation, the price per share specified in the agreement relating to such ISO shall not be less than 110% of the Fair Market Value per share of Common Stock on the date of the grant.

(c) To the extent that the aggregate Fair Market Value (determined at the time an ISO is granted) of Common Stock for which ISOs granted to any employee are exercisable for the first time by such employee during any calendar year (under all stock option plans of the Company and any Related Corporation) exceeds $100,000 (or such higher value as permitted under Code Section 422 at the time of determination) such Options will be treated as NSOs, provided that this Section shall have no force or effect to the extent that its inclusion in the Plan is not necessary for Options issued as ISOs to qualify as ISOs pursuant to Section 422 of the Code. The rule of this Section 6(c) shall be applied by taking Options in the order in which they were granted.

(d) As used herein, "***Fair Market Value***" means:

(i) if the Common Stock is then traded on a national securities exchange, the closing sale price for such stock (or the closing bid, if no sales were reported as quoted on such exchange or market) on the date of determination (or, if no closing sales price or closing bid was reported on that date, as applicable, on the last

trading date such closing sales price or closing bid was reported);

(ii) if the Common Stock is regularly quoted on an automated quotation system but not reported on national securities exchange, the closing sale price or average of bid prices last quoted on that date by an established quotation service (or, if no such prices were reported on that date, on the last date such prices were reported); or

(iii) if the Common Stock is not traded on an established securities market (as defined in Treasury Regulation Section 1.897-1(m)), the fair market value as determined in good faith by the Committee by reasonable application of a reasonable valuation method consistently applied and taking into consideration all available information material to the value of the Company, determined in a manner consistent with Section 409A of the Code and the regulations thereunder.

7. Option Duration. Subject to earlier termination as provided in Sections 9 and 10, each Option shall expire on the date specified by the Committee, but not more than:

(a) 10 years from the date of grant in the case of NSOs;

(b) 10 years from the date of grant in the case of ISOs generally; and

(c) 5 years from the date of grant in the case of ISOs granted to an employee owning stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any Related Corporation.

Subject to earlier termination as provided in Sections 9 and 10, the term of each ISO shall be the Willi set forth in the original instrument granting such ISO, except with respect to any part of such ISO that is converted into an NSO pursuant to Section 18.

8. Exercise of Options. Subject to the provisions of Section 9 through Section 12 of the Plan, each Option granted under the Plan shall be exercisable as follows:

(a) the Option shall either be fully exercisable on the date of grant or shall become exercisable thereafter in such installments as the Committee may specify;

(b) once an installment becomes exercisable it shall remain exercisable until expiration or termination of the Option, unless otherwise specified by the Committee;

(c) each Option or installment may be exercised at any time or from time to time, in whole or in part, for up to the total number of shares with respect to which it is then exercisable; and

(d) the Committee shall have the right to accelerate the date of exercise of any installment, of any Option, provided that the Committee shall not accelerate the exercise date of any installment of any ISO granted to any employee (and not previously converted into an NSO pursuant to Section 18) without the prior consent of such employee if such acceleration would violate the annual vesting limitation contained in Section 422 of the Code, as described in Section 6(c).

9. Effect of Termination of Service. If a grantee ceases to be employed or engaged by the Company and all Related Corporations other than (x) by reason of death or disability as defined in Section 10, or (y) by reason of a termination "For Cause" as defined in this Section 9, then unless otherwise specified in the instrument granting such Stock Right, the grantee shall have the continued right to exercise any Stock Right held by him or her, to the extent of the number of shares with respect to which he or she could have exercised it on the date of termination until the Stock Right's specified expiration date; provided, however, in the event the grantee exercises any ISO after the date that is three months following the date of termination of employment, such ISO will automatically be converted into an NSO subject to the terms of the Plan. In the event of a termination For Cause (as defined below), the right of a grantee to exercise a Stock Right shall terminate as of the date of termination.

(a) For purposes of this Plan, a change in status from employee to a consultant, or from a consultant to employee, will not constitute a termination of employment, provided that a change in status from an employee to consultant may cause an ISO to become an NSO under the Code.

(b) Employment shall be considered as continuing uninterrupted during any bona fide leave of absence (such as those attributable to illness, military obligations or governmental service) provided that the period of such leave does not exceed 90 days or, if longer, any period during which such grantee's right to reemployment with the Company is guaranteed by statute or by contract. A bona fide leave of absence with the written approval of the Company shall not be considered an interruption of employment under the Plan, provided that such written approval contractually obligates the Company or any Related Corporation to continue the employment of the grantee after the approved period of absence; provided that the foregoing approval requirement shall not apply to a leave of absence guaranteed by statute or contract. ISOs granted under the Plan shall not be affected by any change of employment within or among the Company and Related Corporations, so long as the optionee continues to be an employee of the Company or any Related Corporation.

(c) For purposes of this Plan, and unless otherwise defined in the instrument granting a Stock Right, "***For Cause***" means:

(i) if a grantee has an employment agreement, consulting agreement, service agreement or other similar agreement with the Company or any Related Corporation that defines "Cause" or a like term, the meaning set forth in such agreement at the time of the grantee's termination of service; or

(ii) in the absence of such an agreement or definition, the termination of a grantee's status as an employee, a director or consultant (as applicable) for any of the following reasons, as determined by the Committee: (A) the grantee's breach of any fiduciary duty to the Company or any Related Corporation; (B) the grantee's failure to follow the reasonable instructions of the Board or such grantee's direct supervisor, which breach, if curable, is not cured within ten (10) days after notice to such grantee or, if cured, recurs within one hundred eighty (180) days; (C) the grantee's gross negligence, willful misconduct, fraud or acts of dishonesty relating to the Company or any Related Corporation; (D) the grantee's material breach of any noncompetition, confidentiality or similar agreement with the Company or a Related Corporation, as determined under such agreement; (E) the grantee's commission of a crime involving fraud, embezzlement, theft, or other act constituting a felony; or (F) a grantee who is an employee or a consultant and who willfully engages in gross misconduct or willfully violates a Company or a Related Corporation policy which is or is reasonably expected to be materially injurious to the Company and/or a Related Corporation, provided that no act or failure to act on the grantee's part shall be considered "willful" unless done, or omitted to be done, by the grantee not in good faith and without reasonable belief that the grantee's action or omission was in the best interest of the Company or the Related Corporation.

(d) NOTHING IN THE PLAN SHALL BE DEEMED TO GIVE ANY GRANTEE OF ANY STOCK RIGHT THE RIGHT TO BE RETAINED IN

EMPLOYMENT OR OTHER SERVICE BY THE COMPANY OR ANY RELATED CORPORATION FOR ANY PERIOD OF TIME OR TO AFFECT THE AT-WILL NATURE OF ANY EMPLOYEE'S EMPLOYMENT.

10. Death; Disability.

(a) If a grantee ceases to be employed or engaged by the Company and all Related Corporations by reason of death, or if a grantee dies within three months of the date his or her employment or other affiliation with the Company has been terminated, any Stock Right held by him or her may be exercised to the extent of the number of shares with respect to which he or she could have exercised said Stock Right on the date of death, by his or her estate, personal representative or beneficiary who has acquired the Stock Right by will or by the laws of descent and distribution (the "***Successor Grantee***"), unless otherwise specified in the instrument granting such Stock Right, prior to the earlier of (i) one year after the date of termination or (ii) the Stock Right's specified expiration date, provided, however, that a Successor Grantee shall be entitled to ISO treatment under Section 421 of the Code only if the deceased optionee would have been entitled to like treatment had he or she exercised such Option on the date of his or her death; and provided further in the event the Successor Grantee exercises an ISO after the date that is one year following the date of termination by reason of death, such ISO will automatically be converted into a NSO subject to the terms of the Plan.

(b) If a grantee ceases to be employed or engaged by the Company and all Related Corporations by reason of disability, he or she shall continue to have the right to exercise any Stock Right held by him or her on the date of termination until unless otherwise specified in the instrument granting such Stock Right, the earlier of (i) one year after the date of termination or (ii) the Stock Right's specified expiration date provided, however, in the event the grantee exercises an ISO after the date that is one year following the date of termination by reason of disability, such ISO will automatically be converted into a NSO subject to the terms of the Plan. For the purposes of the Plan, the term "disability" shall mean "permanent and total disability" as defined in Section 22(e)(3) of the Code.

(c) The provisions of subsections (a) and (b) of this Section 10 regarding the exercise period of a Stock Right may be waived, extended or further limited, in the discretion of the Committee, in an instrument granting a Stock Right that is not an ISO.

11. Transferability and Assignability of Stock Rights.

(a) Except for ISOs, which are governed by Section 11(b) below, no Stock Right may be transferable by the grantee except (i) upon the approval of the Committee, to the grantee's family members, or (ii) by will or by the laws of descent and distribution. For purposes of the Plan, a grantee's "family members" shall be deemed to consist of his or her spouse, parents, children, grandparents, grandchildren and any trusts created for the benefit of such individuals. A family member to whom any such Stock Right has been transferred pursuant to this Section 11(a) shall be hereinafter referred to as a "***Permitted Transferee***." A Stock Right shall be transferred to a Permitted Transferee in accordance with the foregoing provisions, and subject to all the provisions of the Stock Right Agreement and this Plan, by the execution by the grantee and. the transferee of an assignment in writing in such form approved by the Committee. The Company shall not be required to recognize the rights of a Permitted Transferee until such time as it receives a copy of the assignment from the grantee.

(b) Unless expressly approved by the Committee, no ISO granted under this Plan shall be assignable or otherwise transferable by the optionee except by will or by the laws of descent and distribution. An ISO may be exercised during the lifetime of the optionee only by the optionee.

12. Terms and Conditions of Stock Rights. Stock Rights shall be evidenced by instruments (which need not be identical) in such forms as the Committee may from time to time approve. Such instruments shall conform to the terms and conditions set forth in Sections 6 through 11 hereof and may contain such other provisions as the Committee deems advisable that are not inconsistent with the Plan, including restrictions (or other conditions deemed by the Committee to be in the best interests of the Company) applicable to the exercise of Options or to shares of Common Stock issuable upon exercise of Options or otherwise. If the Committee determines to issue a NSO, it shall take whatever actions it deems necessary, under Section 422 of the Code and the regulations promulgated thereunder, to ensure that such Option is not treated as an ISO, provided however that in granting any NSO, the Committee may specify that such NSO shall be subject to the restrictions set forth herein with respect to ISOs, or to such other termination- and cancellation provisions as the Committee may determine. The Committee may from time to time confer authority and responsibility on one or more of its own members and/or one or more officers of the Company to execute and deliver such instruments. The proper officers of the Company are authorized and directed to take any and all action necessary or advisable from time to time to carry out the terms of such instruments.

13. Adjustments. Upon the occurrence of any of the following events, the rights of a recipient of a Stock Right granted hereunder shall be adjusted as hereinafter provided, unless otherwise provided in the written agreement between the recipient and the Company relating to such Stock Right.

(a) If the shares of Common Stock shall be subdivided or combined into a greater or smaller number of shares or if the Company shall issue shares of Common Stock as a stock dividend on its outstanding Common Stock, the number of shares of Common Stock deliverable upon the exercise of outstanding Stock Rights shall be appropriately increased or decreased proportionately, and appropriate adjustments shall be made in the purchase price (if any) per share to reflect such subdivision, combination or stock dividend.

(b) If the Company is to be consolidated with or acquired by another entity in a merger, sale of all or substantially all of the Company's assets or otherwise (an "***Acquisition***"), unless otherwise provided by the Committee, in its sole discretion, the Committee or the board of directors of any entity assuming the obligations of the Company hereunder (the "***Successor Board***") shall, as to outstanding Stock Rights, make appropriate provision for the continuation of such Stock Rights by either assumption of such Stock Rights or by substitution of such Stock Rights with an equivalent award. For Stock Rights that are so assumed or substituted, in the event of a termination of grantee's employment or consulting relationship (x) by the Company or its successor other than For Cause, or (y) by grantee for Good Reason (as defined below) within sixty (60) days prior to and one hundred eighty (180) days after an Acquisition, all Stock Rights held by such grantee shall become vested and immediately and fully exercisable and all forfeiture restrictions shall be waived. If the Committee or the Successor Board does not make appropriate provisions for the continuation of such Stock Rights by either assumption or substitution, unless otherwise provided by the Committee in its sole discretion, Stock Rights shall become vested and fully and immediately exercisable and all forfeiture restrictions shall be waived and all Stock Rights not exercised at the time of the closing of such Acquisition shall terminate notwithstanding anything to the contrary in Section 9 hereof. In the event such Stock Rights are so fully vested and become immediately exercisable, the Committee may elect in its discretion in lieu of requiring the exercise of any Stock Rights prior to termination, to cancel outstanding Stock Rights in exchange for cash payments for each outstanding Stock Right equal to the product of (x) the positive difference, if any, of (i) the price per share of Common Stock being paid in connection with the Acquisition less (ii) the applicable purchase or exercise price per share of Common Stock for such Stock Right and (y) the number of shares of Common Stock subject to such Stock Right. Any such cash payments shall be paid to the holders of Stock Rights within thirty (30) days after the closing of the Acquisition (subject to any escrow or other holdback periods and related reductions in amounts otherwise so payable applicable to all holders of Common Stock) and shall be subject to any applicable tax withholding requirements.

(c) For purposes of this Section 13, a termination for "***Good Reason***" shall mean the resignation of an employee within thirty (30) days after the Company materially reduces the base annual salary of the employee, without the employee's consent.

(d) In the event of a transaction, including without limitation, a recapitalization or reorganization of the Company (other than a transaction described in subsection (b) above) pursuant to which securities of the Company or of another corporation are issued with respect to the outstanding shares of Common Stock, an optionee or grantee upon exercising a Stock Right shall be entitled to receive for the purchase price paid upon such exercise the securities he or she would have received if he or she had exercised the Stock Right immediately prior to such recapitalization or reorganization.

(e) In the event of the proposed dissolution or liquidation of the Company, each Stock Right will terminate immediately prior to the consummation of such proposed action or at such other time and subject to such other conditions as shall be determined by the Committee.

(f) Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares subject to a Stock Right. No adjustments shall be made for dividends paid in cash or in property other than Common Stock of the Company.

(g) No fractional shares shall be issued under the Plan and any optionee who would otherwise be entitled to receive a fraction of a share upon exercise of a Stock Right shall receive from the Company cash in lieu of such fractional shares in an amount equal to the Fair Market Value of such fractional shares, as determined in the sole discretion of the Committee.

(h) Upon the happening of any of the foregoing events described in subsections (a), (b) or (c) above, the class and aggregate number of shares set forth in Section 4 hereof that are subject to Stock Rights that previously have been or subsequently may be granted under the Plan shall also be appropriately adjusted to reflect the events described. The Committee or the Successor Board shall determine the specific adjustments to be made under this Section 13 and, subject to Section 2, its determination shall be conclusive.

14. Means of Exercising Stock Rights.

(a) Except as otherwise provided in this Plan or the instrument evidencing the Stock Right, a Stock Right (or any part or installment thereof) shall be exercised by giving written notice to the Company at its principal office address to the attention of its President. Such notice shall identify the Stock Right being exercised and specify the number of shares as to which such Stock Right is being exercised, accompanied by full payment of the exercise price therefor, if any, payable as follows (a) in United States dollars in cash or by check, (b) at the discretion of the Committee, through the delivery of already-owned shares of Common Stock having a Fair Market Value equal as of the date of the exercise to the cash exercise price of the Stock Right and, in the case of such already-owned shares of Common Stock, having been owned by the participant for more than six months from the date of surrender, or (c) at the discretion of the Committee, by delivery of the grantee's personal recourse note bearing interest payable not less than annually at a market rate that is no less than 100% of the lowest applicable Federal rate, as defined in Section 1274(d) of the Code, or (d) at the discretion of the Committee, through the surrender of shares of Common Stock then issuable upon exercise of the Stock Right having a Fair Market Value on the date of exercise equal to the aggregate price of the Stock Right, (e) at the discretion of the Committee, delivery of a notice that the grantee has placed a market sell order with a broker with respect to shares of Common Stock then issuable upon exercise of the Stock Right and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the Stock Right exercise price, provided that payment of such proceeds is then made to the Company upon settlement of the sale, or (f) at the discretion of the Committee, by any combination of (a), (b), (c), (d) and (e) or such other consideration and method of payment for the issuance of shares to the extent permitted by Applicable Laws and the Plan. If the Committee exercises its discretion to permit payment of the exercise price of a Stock Right by means of the methods set forth in clauses (b), (c) (d), (e) or (f) of the preceding sentence, such discretion shall be exercised in writing at the time of the grant of the Stock Right in question and such exercise shall also be governed by any terms set forth in the written agreement evidencing the grant of the Stock Right. The holder of a Stock Right shall not have the rights of a stockholder with respect to the shares covered by the Stock Right until the date of issuance of a stock certificate for such shares. Except as expressly provided above in Section 13 with respect to changes in capitalization and stock dividends, no adjustment shall be made for dividends or similar rights for which the record date is before the date such stock certificate is issued.

(b) The Company shall not be required to issue or deliver any shares of Common Stock upon the exercise of any Stock Right granted hereunder or any portion thereof, prior to fulfillment of all of the following conditions to the satisfaction of the Committee:

(i) the admission of such shares to listing on all stock exchanges on which the common Stock is listed, if any;

(ii) the completion of any registration or other qualification of such shares which the Committee shall deem necessary or advisable under any federal or state law or under the rulings or regulations of the United States Securities and Exchange Commission or any other governmental regulatory body, or the determination by the Company, with the advice of legal counsel, that exemptions are available from such registration and qualification;

(iii) the representation, in form acceptable to the Committee, at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any Applicable Laws;

(iv) the obtaining of any approval or other clearance from any federal or state governmental agency or body which the Committee shall determine to be necessary or advisable; and

(v) the lapse of such reasonable period of time following the exercise of the Option as the Committee from time to time may establish for reasons of administrative convenience.

(c) Stock certificates issued and delivered to grantees shall bear such restrictive legends as the Company shall deem necessary or advisable pursuant to applicable federal and state securities laws.

(d) As an alternative to issuance of stock certificates, subject to any applicable rules or regulations, the Company may deliver to the grantee evidence of book entry shares credited to the account of the grantee.

(e) The inability of the Company to obtain approval from any regulatory body having authority deemed by the Company to be necessary to the lawful issuance and sale of any Common Stock pursuant to Stock Rights shall relieve the Company of any liability with respect to the non-issuance or sale of the Common Stock as to

which such approval shall not have been obtained. The Company shall, however, use its commercially reasonable efforts to obtain all such approvals.

15. Surrender of Stock Rights for Cash or Stock. The Committee may, in its sole and absolute discretion and subject to such terms and conditions as it deems appropriate, accept the surrender by an optionee or grantee of a Stock Right granted to him under the Plan and authorize payment in consideration therefor of an amount equal to the difference between the purchase price payable for the shares of Common Stock under the instrument granting the Option and the Fair Market Value of the shares subject to the Stock Right (determined as of the date of such surrender of the Stock Right). Such payment shall be made in shares of Common Stock valued at Fair Market Value on the date of such surrender, or in cash, or partly in such shares of Common Stock and partly in cash as the Committee shall determine. The surrender shall be permitted only if the Committee determines that such surrender is consistent with the purpose set forth in Section 1, and only to the extent that the Stock Right is exercisable under Section 8 on the date of surrender. In no event shall an optionee or grantee surrender his Stock Right under this Section if the Fair Market Value of the shares on the date of such surrender is less than the purchase price payable for the shares of Common Stock subject to the Stock Right. Any ISO surrendered pursuant to the provisions of this Section 15 shall be deemed to have been converted into a NSO immediately prior to such surrender.

16. Effective Date and Term of Plan. The Plan shall become effective at such time as it has been adopted by the Board (the "***Effective Date***"). The Plan shall continue in effect for a term of ten (10) years from the Effective Date unless sooner terminated. Continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted by the Board. Such stockholder approval shall be obtained in the degree and manner required under the Applicable Laws. Any Stock Right awarded or exercised before stockholder approval is obtained shall be rescinded if stockholder approval is not obtained within the time prescribed, and shares issued on the exercise of any such Stock Right shall not be counted in determining whether stockholder approval is obtained.

17. Amendment, Suspension, or Termination of Plan

(a) The Board may at any time amend, suspend or terminate the Plan in any respect, except that it may not, without the approval of the stockholders obtained within twelve (12) months before or after the Board adopts a resolution authorizing any of the following actions, do any of the following:

(i) increase the total number of shares that may be issued under the Plan (except by adjustment pursuant to Section 13);

(ii) modify the provisions of Section 3 regarding eligibility for grants of ISOs;

(iii) modify the provisions of Section 6(b) regarding the exercise price at which shares may be offered pursuant to ISOs (except by adjustment pursuant to Section 13); or

(iv) extend the expiration date of the Plan.

(b) Except as provided in Section 13(b) and this Section 17, in no event may action of the Board or stockholders adversely alter or impair the rights of a grantee, without his or her consent, under any Stock Right previously granted.

18. Conversion of ISOs into NSOs; Termination of ISOs. The Committee, with the consent of any optionee, may in its discretion take such actions as may be necessary to convert an optionee's ISOs (or any installments or portions of installments thereof) that have not been exercised on the date of conversion into NSOs at any time prior to the expiration of such ISOs. These actions may include, but not be limited to, accelerating the exercisability, extending the exercise period or reducing the exercise price of the appropriate installments of optionee's Options. At the time of such conversion, the Committee (with the consent of the optionee) may impose these conditions on the exercise of the resulting NSOs as the Committee in its discretion may determine, provided that the conditions shall not be inconsistent with the Plan. Nothing in the Plan shall be deemed to give any optionee the right to have such optionee's ISOs converted into NSOs, and no conversion shall occur until and unless the Committee takes appropriate action. The Committee, with the consent of the optionee, may also terminate any portion of any ISO that has not been exercised at the time of termination.

19. Withholding of Additional Income Taxes.

(a) Upon the exercise of an NSO, or the grant of a Stock Bonus or Purchase Right for less than the Fair Market Value of the Common Stock, the making of a Disqualifying Disposition (as defined in Section 20), the vesting of restricted Common Stock acquired on the exercise of a Stock Right hereunder or the surrender of an Option pursuant to Section 15, the Company, in accordance with Section 3402(a) of the Code and any applicable state statute or regulation, may require the optionee, Stock Bonus recipient or purchaser to pay to the Company additional withholding taxes in respect of the amount that is considered compensation includable in such person's gross income. With respect to (i) the exercise of an Option, (ii) the grant of a Stock Bonus, (iii) the grant of a Purchase Right of Common Stock for less than its Fair Market Value, (iv) the vesting of restricted Common Stock acquired by exercising a Stock Right, or (v) the acceptance of a surrender of an Option, the Committee in its discretion may condition such event on the payment by the optionee, Stock Bonus recipient or purchaser of any such additional withholding taxes.

(b) At the sole and absolute discretion of the Committee, the holder of Stock Rights may pay all or any part of the total estimated federal and state income tax liability arising out of the exercise or receipt of such Stock Rights, the making of a Disqualifying Disposition, or the vesting of restricted Common Stock acquired on the exercise of a Stock Right hereunder (each of the foregoing, a "***Tax Event***") by tendering already-owned shares of Common Stock or (except in the case of a Disqualifying Disposition) by directing the Company to withhold shares of Common Stock otherwise to be transferred to the holder of such Stock Rights as a result of the exercise or receipt thereof in an amount equal to the estimated federal and state income tax liability arising out of such event, provided that no more shares may be withheld than are necessary to satisfy the holder's actual minimum withholding obligation with respect to the exercise of Stock Rights. In such event, the holder of Stock Rights must, however, notify the Committee of his or her desire to pay all or any part of the total estimated federal and state income tax liability arising out of a Tax Event by tendering already-owned shares of Common Stock or having shares of Common Stock withheld prior to the date that the amount of federal or state income tax to be withheld is to be determined. For purposes of this Section 19(b), shares of Common Stock shall be valued at their Fair Market Value on the date that the amount of the tax withholdings is to be determined.

20. Notice to Company of Disqualifying Disposition. Each employee who receives an ISO must agree to notify the Company in writing immediately after the employee makes a Disqualifying Disposition (as defined below) of any Common Stock acquired pursuant to the exercise of an ISO. A "***Disqualifying Disposition***" is any disposition (including any sale) of such Common Stock before either (a) two years after the date the employee was granted the ISO, or (b) one year after the date the employee acquired Common Stock by exercising the ISO. If the employee has died before such stock is sold, these holding period requirements do not apply and no Disqualifying Disposition can occur thereafter.

21. Governing Law; Construction. The validity and construction of the Plan and the instruments evidencing Stock Rights shall be governed by the laws of the State of Delaware. In construing this Plan, the singular shall include the plural and the masculine gender shall include the feminine and neuter, unless the context otherwise requires.

22. Lock-up Agreement. Each recipient of securities hereunder agrees that such recipient will not, without the prior written consent of the managing underwriter, if any, during the period commencing on the date of the final prospectus relating to the Company's first firm commitment underwritten public offering of its Common Stock under the Securities Act of 1933, as amended (such offering "***Initial Offering***") and ending on the date specified by the Company and such managing underwriter (such period not to exceed one hundred eighty (180) days) (i) lend, offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or any securities convertible into or exercisable or exchangeable (directly or indirectly) for Common Stock (whether such shares or any such securities are then owned by the recipient or are thereafter acquired), or (ii) enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of such securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise. The foregoing provisions of this Section 22 shall apply only to the Initial Offering, shall not apply to the sale of any shares to an underwriter pursuant to an underwriting agreement, and shall only be applicable to the recipients if all officers and directors are subject to the same restrictions and the Company uses commercially reasonable efforts to obtain a similar agreement from all stockholders individually owning greater than one percent (1%) of the Company's outstanding Common Stock (after giving effect to conversion into Common Stock of all outstanding Preferred Stock of the Company). The underwriters in connection with the Initial Offering are intended third-party beneficiaries of this Section 22 and shall have the right, power and authority to enforce the provisions hereof as though they were a party hereto. Each recipient of securities hereunder further agrees to execute such agreements as may be reasonably requested by the underwriters in the Initial Offering that are consistent with this Section 22 or that are necessary to give further effect thereto. Any discretionary waiver or termination of the restrictions of any or all of such agreements by the Company or the underwriters shall apply to all recipients of securities hereunder subject to such agreements *pro rata* based on the number of shares subject to such agreements.

In order to enforce the foregoing covenant, the Company may impose stop-transfer instructions with respect to the securities of each recipient of securities hereunder (and the shares or securities of every other person subject to the foregoing restriction) until the end of such period. Notwithstanding the foregoing, if (i) during the last seventeen (17) days of the one hundred eighty (180)-day restricted period, the Company issues an earnings release or material news or a material event relating to the Company occurs; or (ii) prior to the expiration of the one hundred eighty (180)-day restricted period, the Company announces that it will release earnings results during the sixteen (16)-day period beginning on the last day of the one hundred eighty (180)-day period, the restrictions imposed by this Section 22 shall continue to apply until the expiration of the eighteen (18)-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event.

Exhibit 10.2

EXECUTIVE EMPLOYMENT AGREEMENT

This **Executive Employment Agreement** (this ***"Agreement")*** is made and entered into effective as of 9/22/14 (the ***"Effective Date")*** by and between **Coronado Dermatology, Inc.** (the ***"Company")*** and **Claude Maraoui** ***('"Executive").*** The Company and Executive are hereinafter collectively referred to as the ***"Parties",*** and individually referred to as a ***"Party".***

Recitals

WHEREAS the Company desires to employ Executive and Executive desires to accept employment, on the terms and conditions set forth in this Agreement; and

WHEREAS, in his position, Executive will have access to confidential information concerning the Company's business, its customers and employees; and

WHEREAS, the Company wishes to protect itself from unauthorized use of this information and to protect its investment in its employees, customer relationships and confidential information.

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Agreement

1. Employment.

1.1 Title. Effective as of the Effective Date, Executive is employed by the Company in the position of President and CEO, subject to the terms and conditions set forth in this Agreement. ln his capacity as President and CEO, Executive shall report to the Company's Board of Directors (the ***"Board")*** **.**

1.2 Term. The term of this Agreement shall begin the Effective Date and shall continue until it is terminated pursuant to Section 4 herein (the ***"Term").***

1.3 Duties. Executive shall do and perform all services, acts or things necessary or advisable to conduct the business of the Company and that are normally associated with the position of President and CEO. Executive's performance of duties shall include finding and evaluating technologies, products, product candidates and/or medical devices from unaffiliated third party entities providing expertise on investments and strategies, and other duties the Board deems appropriate. Executive will devote his full business time, attention, knowledge and skills to the affairs of the Company and to his duties hereunder and will perform such duties diligently and to the best of his ability. Notwithstanding the foregoing, the Company acknowledges that Executive currently serves as a consultant to Medimetriks Pharmaceuticals, and Executive may continue such engagement during his employment by the Company, provided that Executive's performance of services for Medimctriks Pharmaceuticals does not interfere with Executive's performance of his duties to the Company, and provided further that such services for Medimetriks Pharmaceuticals does not constitute a violation of this Agreement or the PIIA (as defined below).

1.4 Policies and Practices. The employment relationship between the Parties shall be governed by this Agreement and by the policies and practices established by the Company and/or the Company's Board, or any designated committee thereof. In the event that the terms of this Agreement differ from or are in conflict with the Company's policies or practices or the Company's Employee Handbook, this Agreement shall control.

1.5 Location. Unless the Parties otherwise agree in writing, during the Term, Executive shall perform his duties as described in Section 1.3 at his home office in Arizona. Notwithstanding the foregoing, Executive understands and agrees that the nature of his position will frequently require his presence at the Company's offices in New York, New York, and Executive will be present at such offices when and as deemed necessary by the Company. In addition, the Company may from time to time require Executive to travel temporarily to other locations in connection with the Company's business.

1.6 Background Check. Executive understands, acknowledges and agrees that the Company's offer of employment pursuant to this Agreement is contingent upon satisfactory results of Executive's background and credit check.

1.7 Resources. The Company will provide the necessary funding and resources to support Executive's performance of his duties hereunder, as determined by the Board in its discretion.

2. Loyalty; Restrictive Covenants.

2.1 Loyalty. During the Term, Executive shall devote Executive's full business time, attention, knowledge and skills to the affairs of the Company and to his duties hereunder, and will perform such duties diligently and to the best of his ability.

2.2 Agreements Protecting Confidential and Proprietary Information. In connection with and as a material condition of the Company's decision to offer Executive employment, Executive understands, acknowledges and agrees to promptly execute and be bound by certain restrictive covenants during and after his employment with the Company, as contained in the Company's Proprietary Information and Inventions Agreement ***("PIIA").*** A copy of the PIIA is attached to this Agreement as Exhibit A. Executive acknowledges and agrees that his services to the Company pursuant to this Agreement are unique and extraordinary and that in the course of performing such services Executive shall have access to and knowledge of significant confidential, proprietary, and trade secret information belonging to the Company. Executive agrees that the provisions and restrictions set forth in the PIIA are reasonable and necessary to protect the Company's legitimate business interests in its goodwill, its confidential, proprietary, and trade secret information, and its investment in the unique and extraordinary services to be provided by Executive pursuant to this Agreement.

2.3 Non-Competition and Non-Solicitation.

2.3.1 Purpose. Executive and the Company understand and agree that the purpose of this Section 2.3 is solely to protect the Company's legitimate business interests, including, but not limited to its confidential and proprietary information, customer relationships and goodwill, and the Company's competitive advantage, and is not intended to impair, nor will it impair, Executive's ability or right to work or earn a living. Therefore, Executive agrees to be subject to restrictive covenants under the following terms.

2.3.2 Definitions. As used in this Agreement, the following terms have the meanings given to such terms below.

(i) "Affiliate" means, with respect to any specific entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified entity.

(ii) "Business" means the business(es) in which the Company or its Affiliates are or were engaged at the time of, or during the 12 month period prior to, the termination of Executive's employment with the Company for any reason.

(iii) "Customer" means any person or entity who is or was a customer or client of the Company or its Affiliates at the time of, or during the 12 month period prior to, the termination of Executive's employment with the Company for any reason.

(iv) "Company Employee" means any person who is or was an employee of the Company or its Affiliates at the time of, or during the twelve (12) month period prior to, the termination of Executive's employment with the Company for any reason.

(v) "Restricted Period" means (A) the period commencing on the date of termination of Executive's employment with the Company for any reason and ending six (6) months after such date if the date of termination is before the second anniversary of the Effective Date; or (B) the period commencing on the date of termination of Executive's employment with the Company for any reason and ending twelve (12) months after such date if the date of termination is on or after the second anniversary of the Effective Date; provided, however, in either case that the period shall be tolled and shall not run during any time Executive is in violation of this Section 2.3 , it being the intent of the parties that the Restricted Period shall be extended for any period of time in which Executive is in violation of this Section 2.3 .

(vi) "Territory" means the United States of America, it being understood that the Company's business is nationwide in scope and a nationwide restriction is reasonable and necessary to protect the Company's interests.

2.3.3 Non-Participation with the Company's Competitors. During his employment with the Company, Executive will not, on his own behalf or on behalf of any other person, engage in any business competitive with or adverse to that of the Company. In addition, during his employment with the Company, Executive will not acquire, assume or participate in, directly or indirectly, any position, investment or interest known by Executive to be adverse or antagonistic to the Company, its business, or prospects, financial or otherwise, or in any company, person, or entity that is, directly or indirectly, in competition with the business of the Company or any of its Affiliates (as defined above). Ownership by Executive, in professionally managed funds over which the Executive does not have control or discretion in investment decisions, or as a passive investment, of less than two percent (2%) of the outstanding shares of capital stock of any corporation with one or more classes of its capital stock listed on a national securities exchange or publicly traded on a national securities exchange or in the over-the-counter market shall not constitute a breach of this Section 2.3.3.

2.3.4 Non-Competition. During his employment with the Company and during the Restricted Period, Executive will not, directly or indirectly, (i) engage in the Business in the Territory (other than on behalf of the Company), or (ii) hold a position based in or with responsibility for all or part of the Territory, with any person or entity engaging in the Business, whether as an employee, consultant, or otherwise, in which Executive will have duties, or will perform or be expected to perform services for such person or entity, that is or are the same as or substantially similar to the position held by Executive or those duties or services actually performed by Executive for the Company within the twelve (12) month period immediately preceding the termination of Executive's employment with the Company, or in which Executive will use or disclose or be reasonably expected to use or disclose any confidential or proprietary information of the Company for the purpose of providing, or attempting to provide, such person or entity with a competitive advantage with respect to the Business.

2.3.5 Non-Solicitation. During his employment with the Company and during the Restricted Period, Executive will not, directly or indirectly, on Executive's own behalf or on behalf of any other party (except on behalf of the Company):

(i) Call upon, solicit, divert, encourage or attempt to call upon, solicit, divert, or encourage any Customer for purposes of marketing, selling, or providing products or services to such Customer that are similar to or competitive with those offered by the Company;

(ii) Accept as a customer any Customer for purposes of marketing, selling, or providing products or services to such Customer that are similar to or competitive with those offered by the Company;

(iii) Induce, encourage, or attempt to induce or encourage any Customer to reduce, limit, or cancel its business with the Company; or

(iv) Solicit, induce, or attempt to solicit or induce any Company Employee to terminate his or her employment with the Company.

2.3.6 Reasonableness of Restrictions. Executive acknowledges and agrees that (i) his services to the Company under this Agreement are unique and extraordinary; (ii) the restrictive covenants in this Agreement are essential elements of Executive's employment by the Company and are reasonable given Executive's access to the Company's confidential information and the substantial knowledge and goodwill Executive will acquire with respect to the business of the Company as a result of his employment with the Company, and the unique and extraordinary services to be provided by Executive to the Company; (iii) the restrictive covenants contained in this Agreement are reasonable in time, territory, and scope, and in all other respects; and (iv) enforcement of the restrictions contained herein will not deprive the Executive of the ability to earn a reasonable living. Should any part or provision of this Section 2.3 be held invalid, void, or unenforceable in any court of competent jurisdiction, such invalidity, voidness, or unenforceability shall not render invalid, void, or unenforceable any other part or provision of this Agreement. The parties further agree that if any portion of this Section 2.3 is found to be invalid or unenforceable by a court of competent jurisdiction because its duration, territory, or other restrictions are deemed to be invalid or unreasonable in scope, the invalid or unreasonable terms shall be replaced by terms that are valid and enforceable and that come closest to expressing the intention of such invalid or unenforceable terms.

2.3.7 Enforcement. Executive acknowledges and agrees that the Company will suffer irreparable harm in the event that Executive breaches any of Executive's obligations under this Section 2.3 and that monetary damages would be inadequate to compensate the Company for such breach. Accordingly, Executive agrees that, in the event of a breach by Executive of any of Executive's obligations under this Section 2.3, the Company will be entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief, and expedited discovery for the purpose of seeking relief, in order to prevent or to restrain any such breach. Executive agrees to waive any requirement for the securing or posting of any bond in connection with such remedies. The Company will be entitled to recover its costs incurred in connection with enforcing this Section 2.3, including reasonable attorneys' fees and expenses.

3. Compensation Of Executive.

3.1 Base Salary. The Company shall pay Executive a base salary at the annualized rate of Three Hundred Thousand Dollars ($300,000.00) (the ***"Base Salary"),*** less all applicable taxes, deductions and withholdings, to be paid in equal installments in accord with the Company's normal payroll practices. The Base Salary shall be prorated for any partial year of employment on the basis of a 365-day fiscal year and may be changed in the discretion of the CEO and/or the Board. The Base Salary may only be decreased in connection with a Company-wide decrease in executive compensation; provided, however that Executive shall not be subject to any greater percentage reduction than any other Company executive.

3.2 Annual Milestone Bonus. Each year, the compensation committee of the Board (the ***"Compensation Committee"),*** shall meet and establish the parameters of Executive's additional cash bonus (the ***"Annual Milestone Bonus").*** Executive shall be eligible for an Annual Milestone Bonus of up to one hundred percent (100%) of his Base Salary then in effect. The amount of the Annual Milestone Bonus to be paid shall be based on Executive's attainment of certain financial, clinical development, and/or business milestones (the ***"Milestones")*** to be established annually by the Board or the Compensation Committee. The Milestones for 2014 shall be established as soon as practicable following the Effective Date. The determination of whether Executive has met the Milestones, and if so, the bonus amount (if any) that will be paid, shall be determined by the Board or the Compensation Committee in its reasonable discretion. Except as described in Sections 4.5.2 or 4.5.4 below, Executive must remain employed by the Company through and including the last day of the applicable calendar year in order to be eligible to earn or receive any Annual Milestone Bonus for that year. The Parties agree that Executive will be eligible for a *pro rata* bonus for 2014, provided that he remains employed by the Company through and including December 31 , 2014. The Annual Milestone Bonus shall be paid in cash as a single lump-sum payment no later than March 15 of the next following calendar year.

3.3 Corporate Development Compensation. Upon the closing by the Company of a Corporate Development Transaction (as defined below) occurring during the Term, the Company will issue to Executive shares of common stock in the Company representing fifteen percent (15%) of the total outstanding shares of common stock as of the date of the closing, subject to a Company repurchase right that lapses as the shares vest in accordance with the schedule below (the **"Shares").** One half of the Shares will vest in three equal installments on the first, second and third anniversaries of the date of grant, subject to Executive's continued employment with the Company on each such vesting date. The remaining one half of the Shares will vest upon the Company's achievement of certain sales and other performance related goals as described in a separate agreement to be entered between the Company and Executive at the time of the grant of the Shares. The Shares will granted pursuant to, and otherwise governed by, such separate agreement and the Company's applicable stock plan. For purposes of this Agreement, a ***"Corporate Development Transaction"*** means the license (including a co-marketing license agreement) or purchase of a technology, product, product candidate, or medical device by the Company from an unaffiliated third party entity, provided that such license, purchase, sale or investment occurs primarily as a result of Executive's efforts on the Company's behalf during the Term through Executive's own direct outreach or his network of contacts outside the Company (as opposed to Corporate Development Transactions uncovered by other Company agents or that are sent to other Company agents through Company contacts such as board members, bankers, etc.) as determined by the Board in its sole discretion.

3.4 Expense Reimbursements. The Company will reimburse Executive for all reasonable business expenses incurred by Executive in connection with the performance of his duties hereunder, subject to the Company' s reimbursement policies in effect from time to time.

3.5 Benefits. Executive shall, in accordance with Company policy and the applicable plan documents, be eligible to participate in benefits under any benefit plan or arrangement that may be in effect from time to time and made available to the Company's senior management employees.

3.6 Holidays and Vacation. Executive shall be eligible to accrue up to four (4) weeks of paid vacation per year and will receive paid Company holidays in accordance with Company policy. In addition, Executive will be entitled to three (3) personal days per calendar year. All available time off must be used in accord with the Company's policies and procedures. To the extent Executive would be entitled to a greater number of vacation days or personal days under any other Company policy, such other policy shall govern.

3. 7 Miscellaneous Withholdings. The Company may withhold from any amounts payable under this Agreement such federal, state and local taxes required to be withheld pursuant to any applicable law or other amount properly requested by Executive.

4. TERMINATION.

4.1 Termination by the Company. Executive's employment with the Company is at will and may be terminated by the Company at any time and for any reason, or for no reason, including, but not limited to, under the following conditions:

4.1.1 Termination by the Company for Cause. The Company may terminate Executive's employment under this Agreement for "Cause" (as defined below) by delivery of written notice to Executive in accordance with the procedures set forth in Section 4.6.2 below. Any notice of termination given pursuant to this Section 4.1.1 shall effect termination as of the date of the notice or as of such other date as specified in the notice, subject to Section 4.6.2.

4.1.2 Termination by the Company without Cause. The Company may terminate Executive's employment under this Agreement without Cause at any time and for any reason or for no reason. Such termination shall be effective on the date Executive is so informed or as otherwise specified by the Company.

4.2 Termination by Resignation of Executive. Executive's employment with the Company is at will and may be terminated by Executive at any time and for any reason or for no reason, including via a resignation for Good Reason in accordance with the procedures set forth in Section 4.6.3 below.

4.3 Termination for Death or Complete Disability. Executive's employment with the Company shall terminate effective upon the date of Executive's death or Complete Disability (as defined below).

4.4 Termination by Mutual Agreement of the Parties. Executive's employment with the Company may be terminated at any time upon a mutual agreement in writing of the Parties. Any such termination of employment shall have the consequences specified in such agreement.

4.5 Compensation Upon Termination.

4.5.1 Generally. When this Agreement is terminated for any reason, Executive, or his estate, as the case may be, will be entitled to receive the compensation and benefits earned through the effective date of termination, including, but not limited to, as applicable, any Base Salary owed to Executive, expenses reimbursement amounts owed to Executive, all unpaid amounts of the Annual Milestone Bonus(es) earned in the prior year, if any, Executive earned prior to the termination date by meeting the conditions set forth in Section 3 .2, and accrued and unused vacation benefits earned through the date of termination at the rate in effect at the time of termination, less standard deductions and withholdings.

4.5.2 Death or Complete Disability. If Executive' s employment under this Agreement is terminated by his death or Complete Disability, then, in addition to the amounts described in Section 4.5 .1 , and conditioned upon Executive (or his estate or heirs as applicable) executing and not revoking a release of claims in the form attached as Exhibit B (the *"Release")* within the time periods specified therein, the Company will provide the following separation benefits: (i) the Company will continue Executive's Base Salary (at the rate in effect as of the termination) for a period of ninety (90) days beginning on the sixtieth (60^{th}) day following the termination of Executive's employment with the Company, and (ii) Executive shall be entitled to a pro-rata share of the Annual Milestone Bonus, to be paid when and if such Annual Milestone Bonus would have been paid under this Agreement. The Base Salary payments will be subject to standard payroll deductions and withholdings and will be made on the Company' s regular payroll cycle, provided, however, that any payments otherwise scheduled to be made prior to the effective date of the Release shall accrue and be paid in the first payroll period that follows such effective date.

4.5.3 Termination For Cause or Resignation without Good Reason. If Executive' s employment is terminated by the Company for Cause, or Executive resigns his employment hereunder without Good Reason, the Company shall pay Executive the amounts described in Section 4.5.1. The Company shall thereafter have no further obligations to Executive under this Agreement, except as otherwise provided by law.

4.5.4 Termination Without Cause or Resignation For Good Reason. If Executive' s employment under this Agreement is terminated by the Company without Cause or Executive resigns for Good Reason, then, in addition to the amounts described in Section 4.5.1 , and conditioned upon Executive executing and not revoking the Release within the time periods specified therein, the Company will provide the following separation benefits: (i) the Company will continue Executive' s Base Salary (at the rate in effect as of the termination) for a period of (A) six (6) months if the termination occurs within two (2) years following the Effective Date, or (B) twelve (12) months if the termination occurs more than two (2) years following the Effective Date, in either case beginning on the sixtieth (60^{th}) day following the termination of Executive' s employment with the Company; (ii) Executive shall be entitled to a pro-rata share of the Annual Milestone Bonus for the year in which the termination occurred, to be paid when and if such Annual Milestone Bonus would have been paid under this Agreement; and (iii) if Executive timely elects continued health insurance coverage under COBRA, the Company shall pay the entire premium necessary to continue such coverage for Executive and Executive's eligible dependents until the conclusion of the time when Executive is receiving continuation of Base Salary payments or until Executive becomes eligible for group health insurance coverage under another employer's plan, whichever occurs first. The Base Salary payments will be subject to standard payroll deductions and withholdings and will be made on the Company's regular payroll cycle, provided, however, that any payments otherwise scheduled to be made prior to the effective date of the Release shall accrue and be paid in the first payroll period that follows such effective date.

4.6 Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

4.6.1 Complete Disability. As used herein, ***"Complete Disability"*** means the inability of Executive, due to the condition of his physical, mental or emotional health, effectively to perform the essential functions of his job with or without reasonable accommodation for a continuous period of more than 90 days or for 90 days in any period of 180 consecutive days. For purposes of making a determination as to whether a Complete Disability exists, at the Company's request Executive agrees to make himself available and to cooperate in a reasonable examination by a licensed independent physician retained by the Company and to authorize the disclosure and release to the Company of all medical records related to such examination.

4.6.2 Cause. As used herein, ***"Cause"*** means: (i) Executive's conviction of fraud, embezzlement or misappropriation with respect to the Company, (ii) Executive's material breach of a material term of this Agreement, (iii) Executive's material breach of the Proprietary Information and Inventions Agreement between Executive and the Company, (iv) Executive's breach of fiduciary duties to the Company, (v) Executive's willful failure or refusal to perform his material duties under this Agreement or failure to follow any specific lawful instructions of the Board, (vi) Executive's conviction or plea of nolo contendere in respect of a felony or of a misdemeanor involving moral turpitude, or (vii) Executive's willful or negligent misconduct that has a material adverse effect on the property, business, or reputation of the Company. For purposes of clauses (ii) through (vii), Executive shall have thirty (30) days after Executive's receipt of written notice thereof from the Company to cure any such failure, action or breach.

4.6.3 Good Reason. For purposes of this Agreement, ***"Good Reason"*** means the occurrence of any of the following events without Executive's consent: (i) a material reduction of Executive's Base Salary, except in connection with a Company-wide decrease in executive compensation, as provided in Section 3 .1 of this Agreement, (ii) a material diminution of Executive's authority, duties, or responsibilities, or (iii) the Company's material breach of this Agreement. In order for Executive to resign for Good Reason, Executive must provide written notice to the Company of the existence of the Good Reason condition within thirty (30) days of the date on which Executive discovers, or reasonably should have discovered, the existence of such Good Reason condition. Upon receipt of such notice, the Company will have thirty (30) days during which it may remedy the Good Reason condition and not be required to provide for the benefits described in Section 4.5.4 as a result of such proposed resignation. If the Good Reason condition is not remedied within such thirty (30) day period, Executive may resign based on the Good Reason condition specified in the notice effective immediately upon the expiration of the thirty (30) day cure period.

4.7 Survival of Certain Sections. Sections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, and 18 of this Agreement will survive the termination of this Agreement.

4.8 Section 409A Compliance. Notwithstanding anything to the contrary set forth herein, any payments and benefits provided under this Section 4 that constitute "deferred compensation" within the meaning of Section 409A of the Internal Revenue Code and the regulations and other guidance thereunder and any state law of similar effect (collectively "Section 409A") will not commence in connection with Executive's termination of employment unless and until Executive has also incurred a "separation from service" (as such term is defined in Treasury Regulation Section 1.409A-l(h) (a "Separation From Service"), unless the Company reasonably determines that such amounts may be provided to Executive without causing Executive to incur the additional 20% tax under Section 409A. The parties intend that each installment of the separation benefits payments provided for in this Agreement is a separate "payment" for purposes of Treasury Regulation Section 1.409A-2(b)(2)(i). For the avoidance of doubt, the parties intend that payments of the Separation Benefits set forth in this Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A provided under Treasury Regulation Sections 1.409A-l(b)(4), 1.409A-l(b)(5) and 1.409A-1(b)(9). Executive and the Company agree to use their best efforts to amend the terms of this Agreement from time to time as may be necessary to avoid the imposition of penalties or additional taxes under Section 409A of the Internal Revenue Code; provided, however, any such amendment will provide Executive substantially equivalent economic payments and benefits as set forth herein and will not in the aggregate, materially increase the cost to, or liability of, the Company hereunder. However, if the Company determines that the Separation Benefits constitute "deferred compensation" under Section 409A and Executive is, on the termination of service, a "specified employee" of the Company or any successor entity thereto, as such term is defined in Section 409A, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the Separation Benefits payments will be delayed until the earlier to occur of: (i) the date that is six months and one day after Executive' s Separation From Service, or (ii) the date of Executive' s death (such applicable date, the "Specified Employee Initial Payment Date"), the Company (or the successor entity thereto, as applicable) will (A) pay to Executive a lump sum amount equal to the sum of the Separation Benefits payments that Executive would otherwise have received through the Specified Employee Initial Payment Date if the commencement of the payment of the Separation Benefits had not been so delayed pursuant to this Section and (B) commence paying the balance of the separation benefits in accordance with the applicable payment schedules set forth in this Agreement.

5. GUARANTEE BY CORONADO BIOSCIENCES, INC.

Although Executive is an employee of the Company and not of Coronado Biosciences, Inc. (the Company's parent company), in the event that the Company fails or is unable to pay Executive the compensation due to him pursuant to this Agreement, upon notice from Executive, Coronado Biosciences will pay or ensure that the Company will pay such amounts to Executive. Coronado Biosciences' liability pursuant to this guarantee will in no event be greater than the amount that is due to Executive pursuant to this Agreement. In the event of any claim pursuant to this guarantee, Coronado Biosciences will have available to it all defenses and set-offs available to the Company.

6. ASSIGNMENT AND BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of Executive and Executive's heirs, executors, personal representatives, assigns, administrators and legal representatives. Because of the unique and personal nature of Executive's duties under this Agreement, neither this Agreement nor any rights or obligations under this Agreement shall be assignable by Executive. This Agreement shall be binding upon and inure to the benefit of the Company and its successors, assigns and legal representatives. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company.

7. NOTICES.

All notices or demands of any kind required or permitted to be given by the Company or Executive under this Agreement shall be given in writing and shall be personally delivered (and receipted for) or faxed during normal business hours or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows :

If to the Company:

Coronado Dermatology, Inc.

_____

_____

Attn: _____

If to Executive:

Claude Maraoui
10020 N 111th Place
Scottsdale, AZ

Any such written notice shall be deemed given on the earlier of the date on which such notice is personally delivered or three (3) days after its deposit in the United States mail as specified above. Either Party may change its address for notices by giving notice to the other Party in the manner specified in this Section.

8. CHOICE OF LAW.

This Agreement shall be construed and interpreted in accordance with the internal laws of the State of New York without regard to its conflict of laws principles.

9. INTEGRATION.

This Agreement, including all documents referenced herein, contains the complete, final and exclusive agreement of the Parties relating to the terms and conditions of Executive's employment and the termination of Executive's employment, and supersedes all prior and contemporaneous oral and written employment agreements or arrangements between the Parties.

10. AMENDMENT.

This Agreement cannot be amended or modified except by a written agreement signed by Executive and the Company.

11. WAIVER.

No term, covenant or condition of this Agreement or any breach thereof shall be deemed waived, except with the written consent of the Party against whom the wavier is claimed, and any waiver or any such term, covenant, condition or breach shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other term, covenant, condition or breach.

12. SEVERABILITY.

The finding by a court of competent jurisdiction of the unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid or illegal. Such court shall have the authority to modify or replace the invalid or unenforceable term or provision with a valid and enforceable term or provision, which most accurately represents the Parties' intention with respect to the invalid or unenforceable term, or provision.

13. INTERPRETATION; CONSTRUCTION.

The headings set forth in this Agreement are for convenience of reference only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Company, but Executive has been encouraged to consult with, and has consulted with, Executive's own independent counsel and tax advisors with respect to the terms of this Agreement. The Parties acknowledge that each Party and its counsel has reviewed and revised, or had an opportunity to review and revise, this Agreement, and any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

14. ATTORNEYS FEES.

Except as otherwise prohibited by law, in the event a Party brings an action to enforce the terms of this Agreement, in addition to any other remedies, the prevailing party will be entitled to recovery of its reasonable attorneys' fees and costs incurred by it arising out of such breach or the defense thereof.

15. REPRESENTATIONS AND WARRANTIES.

15.1 Obligations to Prior Employers. Executive represents and warrants to the Company that Executive is not obligated or restricted under any agreement (including any non-competition or confidentiality agreement), judgment, decree, order or other restraint of any kind that could impair Executive's ability to perform the duties and obligations required of Executive hereunder. Executive further represents and warrants to the Company that he has not violated any confidentiality agreement or other similar obligation that he has to any former employer and that he has not disclosed any confidential or trade secret information belonging to any former employer to the Company or its agents. Executive agrees that he will not use confidential information and/or trade secrets belonging to any former employer in his employment with the Company or otherwise as a resource for building the business of the Company and will structure his and the Company's work environment and practices in such a way to ensure that any such information will not be used or disclosed during the course of his relationship with the Company.

15.2 Litigation Support. Both during and after Executive's employment with the Company, if the Company is evaluating, pursuing, contesting or defending any proceeding, charge, complaint, claim, demand, notice, action, suit, litigation, hearing, audit, investigation, arbitration or mediation, in each case whether initiated by or against the Company (collectively, a ***"Proceeding"),*** other than a Proceeding initiated by or against Executive, Executive will reasonably cooperate with the Company and its counsel in the evaluation, pursuit, contest or defense of the Proceeding and provide such testimony and access to books and records as may be necessary in connection therewith. Any such cooperation shall be done at times mutually convenient for Executive and the Company, and the Company will ensure that any such cooperation does not interfere with any duties or obligations that Executive may have to a third party, including any future employer. The Company will reimburse Executive for Executive's out-of-pocket expenses related to such cooperation.

15.3 Future Employment. In the event of Executive's separation from the Company, regardless of the reason or cause of that separation, Executive agrees that for a period of twelve (12) months from the date his employment terminates, he will provide the Company with no fewer than three (3) business days' notice of his intent to accept employment with or for an organization other than Company for the express purpose of allowing the Company to determine if such proposed employment interferes with any of Executive's surviving obligations under this Agreement. The notice of intent to accept employment will identify the new employer, list Executive's anticipated title and describe his anticipated duties.

16. COUNTERPARTS.

This Agreement may be executed in two counterparts, each of which shall be deemed an original, all of which together shall contribute one and the same instrument.

17. JURISDICTION; VENUE.

The Parties agree that any litigation arising out of or related to this Agreement or Executive's employment by the Company shall be brought exclusively in any state or federal court in New York, New York. Each Party (i) consents to the personal jurisdiction of said courts, (ii) waives any venue or inconvenient forum defense to any proceeding maintained in such courts, and (iii) except as otherwise provided in this Agreement, agrees not to bring any proceeding arising out of or relating to this Agreement or Executive's employment by the Company in any other court.

18. ADVERTISING WAIVER.

Executive agrees to permit the Company, and persons or other organizations authorized by the Company, to use, publish and distribute advertising or sales promotional literature concerning the products and/or services of the Company, or the machinery and equipment used in the provision thereof, in which Executive's name and/or pictures of Executive taken in the course of Executive's provision of services to the Company appear. Executive hereby waives and releases any claim or right Executive may otherwise have arising out of such use, publication or distribution.

[Remainder of Page Intentionally Left Blank. Signature Page Immediately Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Coronado dermatology, inc.

name:
position:

9/22/2014
date

executive:

/s/ claude maraoui 9-22-14

claude maraoui **date**

For Purposes Of Section 5 Only:
coronado biosciences, inc.

/s/ lindsay a. Rosenwald,md 9/22/2014

lindsay a. Rosenwald,md **date**
Chief Executive Officer

EXHIBIT A

EXHIBITB

Release of Claims

RELEASE OF CLAIMS

THIS RELEASE OF CLAIMS (this **"Release")** is made by Claude Maraoui **("Executive")** into as of the date it is signed by Executive, as indicated on the signature page hereof.

Executive acknowledges that he previously executed an Employment Agreement (the**"Agreement")** that included, among other items, a promise of severance pay and other benefits by Coronado Dermatology, Inc. (the **"Company")** in certain situations, contingent upon Executive's execution of a release of claims. Pursuant to the terms of the Agreement and Company' s promise to provide severance pay and other benefits, Executive executes this Release.

Executive, on his own behalf and on behalf of his heirs, personal representatives, successors and assigns, hereby release and forever discharge the Company and each of its Affiliates and each and every one of their respective present and former shareholders, directors, officers, members, employees, agents, insurers, predecessors, successors and assigns (the **"Released Parties"),** of and from any and all claims, demands, actions, causes of action, damages, costs and expenses which Executive now has or may have by reason of anything occurring, done or omitted to be done as of or prior to date he signs this Release including, but not limited to, (i) any and all claims related to Executive's employment with Company and the termination of same; (ii) any and all claims for additional compensation or benefits other than the compensation and benefits set forth in the Agreement, including but not limited to wages, commissions, deferred compensation, bonuses, or other benefits of any kind; (iii) any and all claims relating to employment practices or policies of Company or its Affiliates; and (iv) any and all claims arising under any state or federal legislation, including, but not limited to, claims under the Employee Retirement Income Security Act, the Family Medical Leave Act, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991 , the Age Discrimination in Employment Act, the Americans with Disabilities Act, as amended, the Older Workers Benefit Protection Act, any act relating to military service, any New York law related to human rights and/or civil rights, and any other federal, state or local law or regulation prohibiting employment discrimination or otherwise governing the employment relationship between Executive and Company (the **"Released Claims"),** except that notwithstanding anything contained in this Release, Executive understands that he is not releasing any claims which cannot by law be released.

Executive further covenants and agrees that he will not sue any of the Released Parties on any ground arising out of or related to any of the Released Claims. Executive acknowledges and agrees that this covenant does not preclude him from filing a charge or complaint with any government agency, to the extent permitted by law, but expressly releases, waives, and disclaims any right to compensation or other benefit that may otherwise inure to him as a result of any such charge or complaint involving the Company.

In making this Release, Executive further represents and acknowledges that:

(a) He is voluntarily entering into and signing this Release;

(b) The claims waived, released and discharged in the above Release include any and all claims Executive has or may have arising out of or related to his employment with the Company and the termination of that employment, including any and all claims under the Age Discrimination in Employment Act;

(c) Those claims waived, released and discharged in this Release do not include, and Executive is not waiving, releasing or discharging, any claims that may arise after the date he signs this Release;

(d) The payments and benefits conditioned upon Executive's execution of this Release constitute consideration that Executive was not entitled to receive before the effective date of this Release absent the execution of this Release;

(e) Executive was given twenty-one (21) days within which to consider this Release;

(f) The Company has advised Executive of his right to consult with an attorney regarding this Release before executing the Release and encouraged him to exercise that right;

(g) Executive may revoke this Release at any time within seven (7) days after the date he signs this Release, and this document will not become effective or enforceable until the eighth (8th) day after the date he signs this Release (on which day this Release will automatically become effective and enforceable unless previously revoked within that seven (7) day period); and

(h) EXECUTIVE HAS CAREFULLY READ THIS DOCUMENT, AND FULLY UNDERSTANDS EACH AND EVERY TERM.

I hereby execute this Release on the _____ day of _____, _____ .

Claude Maraoui

Exhibit 10.3

JOURNEY MEDICAL CORPORATION
NON-EMPLOYEE DIRECTORS COMPENSATION PLAN

ARTICLE 1
PURPOSE

1.1. PURPOSE. The purpose of the Journey Medical Corporation Non-Employee Directors Compensation Plan is to attract, retain and compensate highly-qualified individuals who are not employees of Journey Medical Corporation for service as members of the Board by providing them with competitive compensation and an opportunity to participate in the Company's future growth through the granting of stock-based incentive awards. The Company intends that the Plan will benefit the Company and its stockholders by allowing Non-Employee Directors to have a personal financial stake in the Company through an ownership interest in the Stock and will closely associate the interests of Non-Employee Directors with that of the Company's stockholders.

1.2. ELIGIBILITY. All Non-Employee Directors shall automatically be participants in the Plan.

ARTICLE 2
DEFINITIONS

2.1. DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings given such terms in the LTIP. Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

(a) "Annual Equity Award" means stock options, stock awards, restricted stock, restricted stock units, stock appreciation rights, or other awards based on or derived from the Stock which are authorized under this Plan for award to Non-Employee Directors under Section 6.2 of the Plan.

(b) "Award" means any Initial Equity Award or Annual Equity Award granted to a Non-Employee Director under Article 6 of the Plan.

(c) "Basic Cash Retainer" means the annual cash retainer (excluding any Supplemental Cash Retainer, Meeting Fees and expenses) payable by the Company to a Non-Employee Director pursuant to Section 5.1 hereof for service as a director of the Company, as established from time to time by the Board and set forth in Schedule I hereto.

(d) "Company" means Journey Medical Corporation, a Delaware corporation.

(e) "Initial Equity Award" means stock options, stock awards, restricted stock, restricted stock units, stock appreciation rights, or other awards based on or derived from the Stock which are authorized under this Plan for award to Non-Employee Directors under Section 6.1 of the Plan.

(f) "LTIP" means the Journey Medical Corporation 2015 Stock Incentive Plan, as amended, or any subsequent equity compensation plan approved by the Board and designated as the LTIP for purposes of this Plan.

(g) "Meeting Fees" means fees for attending a meeting of the Board or one of its Committees as set forth in Section 5.3 hereof.

(h) "Non-Employee Director" means a director of the Company who is not an employee of the Company and who is not directly compensated by the Company under a separate Board-approved agreement with such director, or a related entity to such director, for service as a director during a Plan Year.

(i) "Plan" means this Journey Medical Corporation Non-Employee Directors Compensation Plan, as amended from time to time.

(j) "Plan Year(s)" means the approximate twelve-month periods between annual meetings of the stockholders of the Company.

(k) "Supplemental Cash Retainer" means the supplemental annual cash retainer (excluding Basic Cash Retainer, Meeting Fees and expenses) payable by the Company to a Non-Employee Director pursuant to Section 5.2 hereof for service as Chairman of the Board, Lead Director, or chair of a committee of the Board, as established from time to time by the Board and set forth in Schedule I hereto.

ARTICLE 3
ADMINISTRATION

3.1. ADMINISTRATION. The Plan shall be administered by the Board, or, at the discretion of the Board from time to time, the Plan may be administered by a committee of the Board. Subject to the provisions of the Plan, the Board shall be authorized to interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, and to make all other determinations necessary or advisable for the administration of the Plan. The Board's interpretation of the Plan, and all actions taken and determinations made by the Board pursuant to the powers vested in it hereunder, shall be conclusive and binding upon all parties concerned including the Company, its stockholders and persons granted awards under the Plan. The Board may appoint a plan administrator to carry out the ministerial functions of the Plan, but the administrator shall have no other authority or powers of the Board. To the extent the Board has delegated any authority and responsibility under this Plan to a committee of the Board, such committee shall have the powers and protections of the Board hereunder, and any reference herein to the Board (other than in this Section 3.1) shall include such committee. To the extent any action of the Board under the Plan conflicts with actions taken by such committee, the actions of the Board shall control.

3.2. RELIANCE. In administering the Plan, the Board may rely upon any information furnished by the Company, its public accountants and other experts. No individual will have personal liability by reason of anything done or omitted to be done by the Company or the Board in connection with the Plan.

3.3. INDEMNIFICATION. Each person who is or has been a member of the Board or who otherwise participates in the administration or operation of the Plan shall be indemnified by the Company against, and held harmless from, any loss, cost, liability or expense that may be imposed upon or incurred by him or her in connection with or resulting from any claim, action, suit or proceeding in which such person may be involved by reason of any action taken or failure to act under the Plan and shall be fully reimbursed by the Company for any and all amounts paid by such person in satisfaction of judgment against him or her in any such action, suit or proceeding, provided he or she will give the Company an opportunity, by written notice to the Board, to defend the same at the Company's own expense before he or she undertakes to defend it on his or her own behalf. This right of indemnification shall not be exclusive of any other rights of indemnification.

ARTICLE 4
SHARES

4.1. SOURCE OF SHARES FOR THE PLAN. The Awards and shares of Stock that may be issued pursuant to the Plan shall be issued under the LTIP, subject to all of the terms and conditions of the LTIP, including but not limited to Section 5.1 of the LTIP, which provides that the maximum aggregate number of Shares associated with any Award granted under this Plan in any calendar year to any one Non-Employee Director shall be determined by the Company. The terms contained in the LTIP are incorporated into and made a part of this Plan with respect to Awards granted pursuant hereto, and any such Awards shall be governed by and construed in accordance with the LTIP. In the event of any actual or alleged conflict between the provisions of the LTIP and the provisions of this Plan, the provisions of the LTIP shall be controlling and determinative. The Plan is considered to be and shall be operated as a subplan of the LTIP, and does not constitute a separate source of shares for the grant of the Awards provided herein.

ARTICLE 5
CASH COMPENSATION

5.1. BASIC CASH RETAINER. For each Plan Year commencing with 2021, each Non-Employee Director shall be paid a Basic Cash Retainer for service as a director during each Plan Year, payable in advance, on the first business day following each annual meeting of stockholders. The amount of the Basic Cash Retainer shall be established from time to time by the Board. The amount of the Basic Cash Retainer is set forth in Schedule I, as amended from time to time by the Board. Each person who first becomes a Non-Employee Director on a date other than an annual meeting date shall be paid a pro rata amount of the Basic Cash Retainer for that Plan Year to reflect the actual number of days served in the Plan Year.

5.2. SUPPLEMENTAL CASH RETAINER. The Chairman of the Board, Lead Director, and chairs of each committee of the Board may be paid a Supplemental Cash Retainer during a Plan Year, payable at the same times as installments of the Basic Cash Retainer are paid. The amount of the Supplemental Cash Retainers shall be established from time to time by the Board, and shall be set forth in Schedule I, as amended from time to time by the Board. A pro rata Supplemental Cash Retainer will be paid to any Non-Employee Director who is elected by the Board to a position eligible for a Supplemental Cash Retainer on a date other than the beginning of a Plan Year, to reflect the actual number of days served in such eligible capacity during the Plan Year.

5.3. MEETING FEES. Each Non-Employee Director may be paid a fee for each meeting of the Board or committee thereof in which he or she participates. The amount of the fees, if any, shall be established from time to time by the Board and shall be set forth in Schedule I, as amended from time to time by the Board. For purposes of this provision, casual or unscheduled conferences among directors shall not constitute an official meeting.

5.4. EXPENSE REIMBURSEMENT. All Non-Employee Directors shall be reimbursed for reasonable travel and out-of-pocket expenses in connection with attendance at meetings of the Board and its committees, or other Company functions at which the Chief Executive Officer, Chairman of the Board, or Lead Director requests the director to participate.

ARTICLE 6
EQUITY AWARDS

6.1 INITIAL EQUITY AWARD. Subject to share availability under the LTIP, each Non-Employee Director serving as such on July 1, 2021, and each Non-Employee Director thereafter elected or appointed to the Board, shall be granted an Initial Equity Award. The Initial Equity Award is set forth in Schedule I, as amended from time to time by the Board. Such Initial Equity Award shall be subject to the terms and restrictions described in Schedule I and below in this Article 6.

6.2 ANNUAL EQUITY AWARD. Subject to share availability under the LTIP, on the day following each annual meeting of the Company's stockholders, each Non-Employee Director serving as such on that date (other than a director who first became a Non-Employee Director at the stockholders meeting held on the previous day) shall be granted an Annual Equity Award. The Annual Equity Award is set forth in Schedule I, as amended from time to time by the Board. Such Annual Equity Award shall be subject to the terms and restrictions described in Schedule I and below in this Article 6.

6.3 TERMS AND CONDITIONS OF AWARDS. Awards granted under this Article 6 shall be subject to the terms and conditions described below and in the LTIP.

(a) Vesting. Each Award granted under this Plan shall vest as provided in Schedule 1, as amended from time to time by the Board; provided, however, that each Award shall become fully vested upon the occurrence of a Change of Control.

(b) Effect of Termination of Directorship. Upon termination of a Non-Employee Director's membership on the Board for any reason (including without limitation, by reason of death, Disability, retirement or failure to be re-nominated or re-elected as a director), the Non-Employee Director shall forfeit all of his or her right, title and interest in and to any unvested portion of the Initial Equity Award or Annual Equity Award, as the case may be.

(c) Award Certificates. All Awards shall be evidenced by a written Award Certificate between the Company and the Non-Employee Director, which shall include such provisions, not inconsistent with the Plan or the LTIP, as may be specified by the Board.

6.4 ADJUSTMENTS. The adjustment provisions of the LTIP shall apply with respect to Awards granted pursuant to this Plan. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in shares of Stock, or a combination or consolidation of the outstanding Stock into a lesser number of shares of Stock, the number of Awards to be granted to Non-Employee Directors in accordance with Article 6 hereof shall be adjusted proportionately and the shares of Stock then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefore.

ARTICLE 7
AMENDMENT, MODIFICATION AND TERMINATION

7.1. AMENDMENT, MODIFICATION AND TERMINATION. The Board may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board, require stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of a securities exchange on which the Stock is listed or traded, then such amendment shall be subject to stockholder approval; and provided further, that the Board may condition any other amendment or modification on the approval of stockholders of the Company for any reason.

ARTICLE 8
GENERAL PROVISIONS

8.1. EXPENSES OF THE PLAN. The expenses of administering the Plan shall be borne by the Company.

8.2. EFFECTIVE DATE AND DURATION OF THE PLAN. The Plan shall be effective as of the effective date it is approved by the Board. The Plan shall remain in

effect until terminated by the Board.

JOURNEY MEDICAL CORPORATION

By: _____

Claude Maraoui
Chief Executive Officer

JOURNEY MEDICAL CORPORATION

JG PHARMA, INC.

EAST WEST BANK

LOAN AND SECURITY AGREEMENT

This **LOAN AND SECURITY AGREEMENT** is entered into as of March 31, 2021, by and among **EAST WEST BANK** ("Bank") and **JOURNEY MEDICAL CORPORATION** ("PARENT") AND **JG PHARMA, INC.** ("JG"; Parent and JG are sometimes referred to, individually, as a "Borrower" and, collectively, as the "Borrowers").

RECITALS

The Borrowers wish to obtain credit from time to time from Bank, and Bank desires to extend credit to the Borrowers. This Agreement sets forth the terms on which Bank will advance credit to the Borrowers, and the Borrowers will repay the amounts owing to Bank.

AGREEMENT

The parties agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. As used in this Agreement, the following terms shall have the following definitions:

"Accounts" means all presently existing and hereafter arising accounts, contract rights, payment intangibles, and all other forms of obligations owing to a Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by a Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by a Borrower and such Borrower's Books relating to any of the foregoing.

"Advance" or "Advances" means a cash advance or cash advances under the Revolving Facility.

"Affiliate" means, with respect to any Person, any Person that owns or controls directly or indirectly such Person, and any Person that controls or is controlled by or is under common control with such Person, and each of such Person's senior executive officers, directors, and partners.

"Bank Expenses" means all costs or expenses (including attorneys' fees and expenses) incurred in connection with the preparation, negotiation, administration, and enforcement of the Loan Documents; Collateral audit fees; lockbox services fees, and Bank's attorneys' fees and expenses incurred in amending, enforcing or defending the Loan Documents (including fees and expenses of appeal), incurred before, during and after an Insolvency Proceeding, whether or not suit is brought.

"Borrower's Books" means all of a Borrower's books and records including: ledgers; records concerning a Borrower's assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

"Borrowing Base" means an amount equal to eighty five percent (85%) of Eligible Accounts, as determined by Bank with reference to the most recent Borrowing Base Certificate delivered by the Borrowers, and assuming dilution of not more than 2.5% on each Collateral audit; provided however, that the Borrowing Base may be revised from time to time by Bank following each Collateral audit or as Bank deems necessary in Bank's Permitted Discretion and upon three (3) Business Days' prior written notice thereof to the Borrowers.

"Borrowing Base Certificate" is a certificate in substantially the form of Exhibit C.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

"Cash Equivalents" means: (a) securities issued or directly and fully guaranteed or insured by the United States, or, any agency or instrumentality thereof, having maturities of not more than one (1) year from the date of acquisition; (b) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances issued by any bank or trust company in each case subject to regulation by the Federal Deposit Insurance Corporation; (c) repurchase obligations for underlying securities of the types described in clauses (a) and (b) entered into with any Person referenced in clause (b) above; (d) commercial paper maturing no more than one year from the date of creation thereof and rated at the time of acquisition thereof at least "A-2" or the equivalent thereof by S&P or "P-2" or the equivalent thereof by Moody's; (e) readily marketable direct obligations issued by any state, commonwealth or territory of the United States of America, or any political subdivision or taxing authority thereof, in each case, having one of the two highest rating categories obtainable from either Moody's or S&P with maturities of not more than one year from the date of acquisition; (f) interests in any investment company or money market fund which invests a majority of its assets in instruments of the type specified in clauses (a) through (e) above in each case subject to the terms and conditions of Section 6.8 of this Agreement; and (g) any other Investments in cash equivalents as described in any Borrower's investment policy, as such investment policy has been approved by Bank in writing.

"Change in Control" means (i) at any time prior to an initial public offering of the Equity Interests of any Borrower, the occurrence of any transaction by which (A) the holders of the Equity Interests of Parent as of the Closing Date (collectively, the "Permitted Holders") shall cease to own at least a majority of the outstanding voting Equity Interests of Parent on a fully diluted basis and (B) Parent shall cease to own at least one hundred percent (100%) of the outstanding voting Equity Interests of JG on a fully diluted basis and (ii) at any time after an initial public offering of the Equity Interests of any Borrower, any Person, entity, or "group" (within the meaning of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended), other than the Permitted Holders, shall at any time have acquired direct or indirect beneficial ownership of a percentage of the outstanding voting Equity Interests of any Borrower that exceeds 35% thereof, unless the Permitted Holders have, at such time, the right or the ability by voting power, contract, or otherwise to elect or designate for election at least a majority of the board of directors of such Borrower.

"Closing Date" means the date of this Agreement.

"Code" means the California Uniform Commercial Code.

"Collateral" means the property described on **Exhibit A** attached hereto.

"Contingent Obligation" means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards, or merchant services issued or provided for the account of that Person; and (iii) all obligations arising under any agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by Bank in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

"Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof.

"Credit Extension" means each Advance or any other extension of credit by Bank for the benefit of a Borrower hereunder.

"Daily Balance" means the amount of the Obligations owed at the end of a given day.

"Dollar(s)" and the sign "$" mean lawful money of the United States.

"EBITDA" means (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense and amortization expense, plus (d) income tax expense, plus (e) non-cash stock based compensation expenses.

"Eligible Accounts" means those Accounts that arise in the ordinary course of a Borrower's business that comply with all of such Borrower's representations and warranties to Bank set forth in Section 5.4 and net after all offsets; provided, that standards of eligibility may be fixed and revised from time to time by Bank in Bank's Permitted Discretion and upon three (3) Business Days' prior written notice thereof to the Borrowers in accordance with the provisions hereof. Unless otherwise agreed to by Bank, Eligible Accounts shall not include the following:

(a) Accounts that the account debtor has failed to pay within ninety (90) days of invoice date, provided that Accounts owing from AmerisourceBergen may be one hundred twenty (120) days, subject to a Collateral audit;

(b) Accounts with respect to an account debtor, twenty-five percent (25%) of whose Accounts the account debtor has failed to pay within ninety (90) days of invoice date (one hundred twenty (120) days for AmericsourceBergen), in each case solely to the extent of such amount in excess of the aforementioned percentage;

(c) Accounts with respect to which the account debtor is an officer, employee, or agent of a Borrower;

(d) Accounts with respect to which goods are placed on consignment, guaranteed sale, sale or return, sale on approval, bill and hold, demo or promotional, or other terms by reason of which the payment by the account debtor may be conditional;

(e) Accounts with respect to which the account debtor is an Affiliate of a Borrower;

(f) Accounts with respect to which the account debtor does not have its principal place of business in the United States, except for Eligible Foreign Accounts;

(g) Accounts with respect to which the account debtor is the United States or any department, agency, or instrumentality of the United States, except for Accounts of the United States or any department, agency, or instrumentality of the United States, the assignment of which has been acknowledged under the Assignment of Claims Act of 1940 (31 U.S.C. Section 3727) to the extent required and such assignment (to the extent required) otherwise complies with the Assignment of Claims Act to Bank's reasonable satisfaction in the exercise of its reasonable credit judgment;

(h) Accounts with respect to which a Borrower is liable to the account debtor for goods sold or services rendered by the account debtor to a Borrower or for deposits or other property of the account debtor held by a Borrower, but only to the extent of any amounts owing to the account debtor against amounts owed to such Borrower;

(i) Accounts with respect to an account debtor, including Subsidiaries and Affiliates, whose total obligations to the Borrowers exceed twenty-five percent (25%) of all Accounts, to the extent such obligations exceed the aforementioned percentage, except as approved in writing by Bank;

(j) Accounts that have not yet been billed to the account debtor or that relate to deposits (such as good faith deposits) or other property of the account debtor held by a Borrower for the performance of services or delivery of goods which such Borrower has not yet performed or delivered;

(k) Prebillings, retention billings, progress billings or bonded receivables;

(l) Accounts with respect to which the account debtor disputes liability or makes any claim with respect thereto as to which Bank believes, in its sole discretion, that there may be a basis for dispute (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business; and

(m) Accounts that Bank determines in its Permitted Discretion to be unsatisfactory for inclusion as an Eligible Account.

"Eligible Foreign Accounts" means Accounts with respect to which the account debtor does not have its principal place of business in the United States and that (i) are supported by one or more letters of credit in an amount and of a tenor, and issued by a financial institution, reasonably acceptable to Bank, (ii) covered in full by credit

insurance satisfactory to Bank, less any deductible, or (iii) that Bank approves on a case-by-case basis.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing.

"Equipment" means all present and future machinery, equipment, tenant improvements, furniture, fixtures, vehicles, tools, parts and attachments in which a Borrower has any interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations thereunder.

"Event of Default" has the meaning assigned in Article 8.

"Fortress" means Fortress Biotech, Inc.

"Fortress Indebtedness" means the Indebtedness owing by Parent to Fortress under the Fortress Note.

"Fortress Note" means the Future Advance Promissory Note issued by Parent in favor of Fortress on June 6, 2015.

"GAAP" means generally accepted accounting principles as in effect from time to time.

"Indebtedness" means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all capital lease obligations and (d) all Contingent Obligations.

"Insolvency Proceeding" means any proceeding commenced by or against any person or entity under any provision of the United States Bankruptcy Code, as amended, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" means all of a Borrower's right, title, and interest in and to the Copyrights, Trademarks and Patents.

"Interest Expense" means for any fiscal period, interest expense (whether cash or non-cash) determined in accordance with GAAP for the relevant period ending on such date, including, in any event, interest expense with respect to any Credit Extension and other Indebtedness of a Borrower, including, without limitation or duplication, all commissions, discounts, or related amortization and other fees and charges with respect to letters of credit and bankers' acceptance financing and the net costs associated with interest rate swap, cap, and similar arrangements, and the interest portion of any deferred payment obligation (including leases of all types).

"Inventory" means all inventory in which a Borrower has or acquires any interest, including work in process and finished products intended for sale or lease or to be furnished under a contract of service, of every kind and description now or at any time hereafter owned by or in the custody or possession, actual or constructive, of a Borrower, including such inventory as is temporarily out of its custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and such Borrower's Books relating to any of the foregoing.

"Investment" means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any investment, loan, advance or capital contribution or transfer of any assets through advances, equity positions, assumption of liabilities, acquisition of assets or other avenues to any Person.

"Lien" means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance.

"Loan Documents" means, collectively, this Agreement, the lockbox services agreement, any note or notes, documents or instruments executed by a Borrower, any guarantees, pledges or security agreements provided by third parties, and any other document, instrument or agreement entered into in connection with this Agreement, all as amended or extended from time to time.

"Material Adverse Effect" means a material adverse effect on (i) the business operations or condition (financial or otherwise) of the Borrowers and their Subsidiaries taken as a whole or (ii) the ability of the Borrowers, taken as a whole, to repay the Obligations or otherwise perform their obligations under the Loan Documents to which they are a party or (iii) the enforceability or priority of Bank's security interests in the Collateral.

"Moody's" means Moody's Investors Service, Inc. and any successor thereto.

"Net Income" means, as calculated on a consolidated basis for the Borrowers for any period as at any date of determination, the net profit (or loss), after provision for taxes, of the Borrowers for such period taken as a single accounting period.

"Obligations" means all debt, principal, interest, Bank Expenses and other amounts owed to Bank by a Borrower pursuant to this Agreement or any other agreement, whether absolute or contingent, due or to become due, now existing or hereafter arising, including any interest that accrues after the commencement of an Insolvency Proceeding.

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

"Periodic Payments" means all installments or similar recurring payments that Borrowers may now or hereafter become obligated to pay to Bank pursuant to the terms and provisions of any instrument, or agreement now or hereafter in existence between such Borrower and Bank.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Indebtedness" means:

(a) Indebtedness of a Borrower in favor of Bank;

(b) Indebtedness existing on the Closing Date and disclosed in the Schedule;

(c) Indebtedness secured by a lien described in clause (c) of the defined term "Permitted Liens," provided such Indebtedness does not exceed

$250,000 in the aggregate at any given time;

(d) Indebtedness to trade creditors incurred in the ordinary course of business, including Indebtedness incurred in the ordinary course of business with corporate credit cards not to exceed in aggregate $75,000 at all times;

(e) Indebtedness arising from the endorsement of instruments in the ordinary course of business;

(f) intercompany Indebtedness owed by any Subsidiary that is a Borrower to anotherBorrower;

(g) Indebtedness that also constitutes a Permitted Investment;

(h) Indebtedness arising from the honoring of a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds in the ordinary course of business;

(i) Indebtedness owed to any Person (including obligations in respect of letters of credit for the benefit of such Person not exceeding $75,000 at all times) providing workers' compensation, health, disability or other employee benefits or property, casualty, liability insurance, self-insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(j) Indebtedness in respect of netting services, overdraft protection and other similar arrangements in connection with deposit or securities accounts in the ordinary course of business;

(k) Indebtedness consisting of unsecured contingent liabilities arising with respect to customary indemnification provisions or deferred purchase price adjustments in connection with any Permitted Investment or in connection with any asset sale or other dispositions permitted hereunder;

(l) Indebtedness of up to $500,000 consisting of installment payments or notes payable in connection with the licensing or acquisition of assets in the ordinary course of business;

(m) the Fortress Indebtedness, subject to Section 6.10 of this Agreement;

(n) Subordinated Debt;

(o) other unsecured Indebtedness not to exceed $250,000 at any time; and

(p) (i) any Contingent Obligations in respect of Indebtedness otherwise permitted pursuant to clauses (a) through (o) above and (ii) the extension, renewal or refinancing of any Indebtedness described in clauses (a) through (o) above, provided that the principal amount of the Indebtedness being extended, renewed or refinanced does not increase.

"Permitted Investment" means:

(a) Investments existing on the Closing Date disclosed in the Schedule;

(b) Investments in deposit accounts maintained with Bank or otherwise permitted hereunder in the ordinary course of business;

(c) Cash Equivalents;

(d) Investments (including debt obligations) acquired in connection with the settlement of delinquent Accounts in the ordinary course of business or in connection with the bankruptcy or reorganization of suppliers or customers;

(e) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business;

(f) Investments consisting of travel advances in the ordinary course of business;

(g) joint ventures, strategic alliances, collaboration arrangements or non-exclusive licensing arrangements in the ordinary course of a Borrower's business consisting of the nonexclusive licensing of technology, the development of technology or the providing of technical support;

(h) Investments accepted in connection with Permitted Transfers;

(i) Investments in newly-formed Subsidiaries, provided that each such Subsidiary becomes a Borrower promptly after its formation and executes such other documents as shall be reasonably requested by Bank;

(j) acquisitions of licenses or sublicenses and similar arrangements for the use of Intellectual Property or other assets in the ordinary course of business in an aggregate amount not to exceed $500,000 at any time outstanding;

(k) Investments consisting of in-licensing of technology or products in the ordinary course of business;

(l) loans or advances to partners, consultants and employees of a Borrower or any Subsidiary for relocation, entertainment, travel expenses, or similar expenditures (including payments of taxes) in an aggregate amount not to exceed $100,000 at any time outstanding;

(m) guarantees by a Borrower or any Subsidiary of a Borrower of leases (other than in relation to capital lease obligations), contracts, or of other obligations that do not constitute Indebtedness, in each case entered into in the ordinary course of business;

(n) Investments consisting of endorsements for collection or deposit in the ordinary course of business;

(o) Investments consisting of loans not involving the net transfer on a substantially contemporaneous basis of cash proceeds to employees, officers or directors relating to the purchase of Equity Interests of a Borrower pursuant to employee stock purchase plans or other similar agreements approved by such Borrower's Board of Directors; and

(p) other Investments in amounts not to exceed an aggregate of $250,000 in any fiscal year, so long as not otherwise restricted or prohibited under any other Section of this Agreement.

"Permitted Liens" means the following:

(a) Any Liens existing on the Closing Date and disclosed in the Schedule or arising under this Agreement or the other Loan Documents;

(b) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings, provided the same have no priority over any of Bank's security interests;

(c) Liens (i) upon or in any equipment which was not financed by Bank acquired or held by a Borrower or any of its Subsidiaries to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (ii) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment;

(d) carriers', warehousemen's, mechanics', materialmen's, repairmen's or other similar Liens arising in the ordinary course of business and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings;

(e) statutory and common law rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms;

(f) Easements, zoning restrictions, rights of way, and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property;

(g) Liens consisting of judgment or judicial attachment liens with respect to judgments the existence of which do not constitute an Event of Default;

(h) Nonexclusive licenses or sublicenses of Intellectual Property entered into in the ordinary course of business;

(i) Liens on insurance proceeds securing the payment of financed insurance premiums that are promptly paid on or before the date they become due (provided that such Liens extend only to such insurance proceeds and not to any other property or assets);

(j) utility and similar deposits in the ordinary course of business;

(k) leasehold interests in leases or subleases;

(l) Liens that are contractual rights of set off relating to agreements entered into by a Borrower in the ordinary course of business;

(m) the interests of lessors under operating leases and non-exclusive licensors under

license agreements;

(n) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due;

(o) Liens that are subordinated to the Liens of Bank upon terms satisfactory to Bank in its reasonable discretion as long as no Default or Event Default has then occurred and is continuing or would result from any such action; and

(p) Liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by Liens of the type described in clauses (a) through (o) above, provided that any extension, renewal or replacement Lien shall be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase.

"Permitted Transfer" mean:

(a) sales of Inventory in the ordinary course of business;

(b) non-exclusive licenses and similar arrangements for the use of Intellectual Property in the ordinary course of business (including in the context of joint ventures, strategic alliances, collaboration arrangements or licensing arrangements) and licenses that could not result in a legal transfer of title of the licensed property;

(c) dispositions of worn-out, obsolete or surplus equipment or assets in the ordinary course of business;

(d) sales, transfers and other dispositions of accounts receivable (including write-offs, discounts and compromises) in connection with the compromise, settlement or collection thereof;

(e) other transfers of assets having a fair market value of not more than $250,000 in the aggregate in any fiscal year;

(f) sales, transfers, leases and other dispositions of property to the extent that such property constitutes an Investment that is a Permitted Investment;

(g) converting any Indebtedness to Equity Interests of a Borrower;

(h) leases or licenses or subleases or sublicenses entered into in the ordinary course of business (other than in respect of Intellectual Property);

(i) the abandonment or lapse of Intellectual Property that is no longer material to the business of the Borrowers or any Subsidiary, or otherwise no longer of material value, including, for the avoidance of doubt, the termination of license agreements and related agreements;

(j) any issuance or sale by a Borrower of its Equity Interests or other securities, in each case to the extent otherwise permitted pursuant to this Agreement;

(k) Permitted Liens;

(l) (i) dispositions of Cash Equivalents in the ordinary course of business made to a Person that is not an Affiliate of a Borrower and (ii) conversions of Cash Equivalents into cash or other Cash Equivalents;

(m) transfer of property from a Borrower or any Subsidiary to another Borrower; and

(n) transfers of cash pursuant to transactions not prohibited herein and in the ordinary course of business.

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

"Prime Rate" means the greater of (i) 3.25% and (ii) the variable rate of interest, per annum, that Bank announces from time to time as its prime rate, whether or not such announced rate is the lowest rate available from Bank.

"Responsible Officer" means each of the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer and the Controller of a Borrower.

"Revolving Facility" means the facility under which the Borrowers may request Bank to issue Advances, as specified in Section 2.1(a).

"Revolving Line" means a credit extension of up to Seven Million Five Hundred Thousand Dollars ($7,500,000).

"Revolving Maturity Date" means March 31, 2024.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. and any successor thereto.

"Schedule" means the schedule of exceptions attached hereto and approved by Bank, if any.

"Subordinated Debt" means any debt incurred by a Borrower that is subordinated to the debt owing by such Borrower to Bank on terms acceptable to Bank (and identified as being such by such Borrower and Bank), pursuant to a subordination agreement in form and substance reasonably satisfactory to Bank. For the avoidance of doubt, the Fortress Indebtedness shall not constitute Subordinated Debt.

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

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

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and all calculations made hereunder shall be made in accordance with GAAP. When used herein, the terms "financial statements" shall include the notes and schedules thereto. Notwithstanding anything herein to the contrary, for purposes of representations, covenants and calculations made pursuant to the terms of this Agreement, GAAP will be deemed to treat operating leases and capital leases in a manner consistent with their current treatment under GAAP as in effect on December 31, 2019 with respect to the Borrowers, notwithstanding any modifications or interpretive changes thereto that may occur thereafter.

2. LOAN AND TERMS OF PAYMENT.

2.1 Credit Extensions.

The Borrowers jointly and severally promise to pay to the order of Bank, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Bank to a Borrower hereunder. The Borrowers shall also pay interest on the unpaid principal amount of such Credit Extensions at rates in accordance with the terms hereof.

(a) Revolving Advances.

(i) Subject to and upon the terms and conditions of this Agreement, a Borrower may request Advances in an aggregate outstanding amount not to exceed the lesser of (i) the Revolving Line and (ii) the Borrowing Base. Subject to the terms and conditions of this Agreement, Advances may be repaid and reborrowed at any time prior to the Revolving Maturity Date, at which time all Advances shall be immediately due and payable. The Borrowers may prepay any Advances without penalty or premium.

(ii) Whenever the Borrowers desire an Advance, a Borrower will notify Bank by email or telephone no later than 11:00 a.m. Pacific Time, on the Business Day that is one day before the Business Day the Advance is to be made (and three (3) Business Days before the initial Advance). Each such notification shall be promptly confirmed by a Loan Paydown/Advance Request Form in substantially the form of **Exhibit B**. Bank is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Officer or a designee of a Responsible Officer, or without instructions if in Bank's reasonable discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank may rely on any email or telephonic notice given by a person Bank reasonably believes to be a Responsible Officer or a designee thereof, and the Borrowers shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Advances made under this Section to a Borrower's deposit account at Bank, as directed by such Borrower.

2.2 Overadvances. If the aggregate amount of the outstanding Advances exceeds the lesser of the Revolving Line and the Borrowing Base at any time, the Borrowers shall immediately pay to Bank, in cash, the amount of such excess.

2.3 Interest Rates, Payments, and Calculations.

(a) Interest Rate. Except as set forth in Section 2.3(b), the Advances shall bear interest, on the outstanding Daily Balance thereof, at a floating rate equal to one percent (1.0%) above the Prime Rate.

(b) Late Fee; Default Rate. If any payment is not made within ten (10) days after the date such payment is due, the Borrowers shall pay Bank a late fee equal to the lesser of (i) five percent (5%) of the amount of such unpaid amount or (ii) the maximum amount permitted to be charged under applicable law. All Obligations shall bear interest, from and after the occurrence and during the continuance of an Event of Default, at a rate equal to five (5) percentage points above the interest rate applicable immediately prior to the occurrence of the Event of Default.

(c) Payments. Interest hereunder shall be due and payable on the last business day of each month during the term hereof, commencing on March 31, 2021. Bank shall, at its option, charge such interest, all Bank Expenses, and all Periodic Payments against any of a Borrower's deposit accounts or against the Revolving Facility, in which case those amounts shall thereafter accrue interest at the rate then applicable hereunder. Any interest not paid when due shall be compounded by becoming a part of the Obligations, and such interest shall thereafter accrue interest at the rate then applicable hereunder. All payments shall be free and clear of any taxes, withholdings, duties, impositions or other charges, to the end that Bank will receive the entire amount of any Obligations payable hereunder, regardless of source of payment.

(d) Lockbox; Collections. The Borrowers shall cause all account debtors to pay any amounts owing to a Borrower made by wire, ACH, electronic funds transfer or other electronic payment method to such restricted account as Bank shall specify (the "Bancontrol Account"), and to mail all payments made by check to a post office box under Bank's control. All invoices shall specify such post office box address and Bancontrol Account information as the remit to and payment address for all Accounts. Bank shall have sole authority to collect such payments and deposit them to the Bancontrol Account. If a Borrower receives any amount despite such instructions, a Borrower shall immediately deliver such payment to Bank in the form received, except for an endorsement to the order of Bank and, pending such delivery, shall hold such payment in trust for Bank. Bank shall credit all amounts paid into the Bancontrol Account within two Business Days after clearance of any deposits to the Bancontrol Account to Borrower's operating account, provided however that Bank may, in its sole discretion, credit any amounts paid into the Bancontrol Account first against any amounts outstanding and owing to Bank under this Agreement, and then any remaining balance of such amount shall be credited to a Borrower's operating account. Borrowers shall enter into such lockbox agreement as Bank shall reasonably request from time to time. Each Borrower shall cause any third-party payment processors to execute and deliver an acknowledgment and payment direction letter in form and substance reasonably satisfactory to Bank. Bank may, at its option, conduct a credit check of the account debtor for each Eligible Account requested by a Borrower for inclusion in the Borrowing Base. During the existence of an Event of Default, Bank may also verify directly with the respective account debtors the validity, amount and other matters relating to the Eligible Accounts, and notify any account debtor of Bank's security interest in a Borrower's Accounts. Bank may verify invoices at its sole discretion and various forms of verification may be utilized by Bank, which could include the following: proof of delivery, time cards, matching purchase orders, or contracts to invoices, analyzing customer payment history, and direct telephonic or written confirmation with (or an acknowledgement and promise to pay from) account debtors.

(e) Computation. In the event the Prime Rate is changed from time to time hereafter, the applicable rate of interest hereunder shall be increased or decreased, effective as of the day the Prime Rate is changed, by an amount equal to such change in the Prime Rate. All interest chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year for the actual number of days elapsed.

2.4 Crediting Payments. Prior to the occurrence and continuance of an Event of Default, Bank shall credit a wire transfer of funds, check or other item of payment to such deposit account or Obligation as Borrower specifies. During the existence of an Event of Default, the receipt by Bank of any wire transfer of funds, check, or other item of payment shall be immediately applied to conditionally reduce Obligations, but shall not be considered a payment on account unless such payment is of immediately available federal funds or unless and until such check or other item of payment is honored when presented for payment. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Bank after 12:00 noon Pacific Time shall be deemed to have been received by Bank as of the opening of business on the immediately following Business Day. Whenever any payment to Bank under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day, and additional fees or interest, as the case may be, shall accrue and be payable for the period of such extension.

2.5 Fees and Expenses.

(a) Origination Fee. The Borrowers shall pay to Bank the following: on the Closing Date, an origination fee with respect to the Revolving Facility equal to $56,250, which shall be nonrefundable; and

(b) Bank Expenses. The Borrowers shall pay to Bank on the Closing Date, all Bank Expenses incurred through the Closing Date, including reasonable and documented attorneys' fees and expenses, in an amount not to exceed $45,000, less any amounts paid specifically for Bank Expenses prior to the Closing Date, and, after the Closing Date, all Bank Expenses, including reasonable and documented attorneys' fees and expenses, as and when they are incurred by Bank.

2.6 Term. This Agreement shall become effective on the Closing Date and, subject to Section 12.7, shall continue in full force and effect for so long as any Obligations (other than unasserted contingent indemnification obligations) remain outstanding or Bank has any obligation to make Credit Extensions under this Agreement. Notwithstanding the foregoing, Bank shall have the right to terminate its obligation to make Credit Extensions under this Agreement immediately and without notice upon the occurrence and during the continuance of an Event of Default. Notwithstanding termination, Bank's Lien on the Collateral shall remain in effect for so long as any Obligations (other than unasserted contingent indemnification obligations) are outstanding.

3. CONDITIONS OF LOANS.

3.1 Conditions Precedent to Initial Credit Extension. The obligation of Bank to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance reasonably satisfactory to Bank, the following:

(a) this Agreement;

(b) a certificate of the Secretary of each Borrower with respect to incumbency and resolutions authorizing the execution and delivery of this Agreement;

(c) UCC National Form Financing Statements;

(d) certificate(s) of insurance naming Bank as loss payee and additional insured;

(e) payment of the fees and Bank Expenses then due specified in Section 2.5 hereof;

(f) current financial statements of the Borrowers;

(g) an audit of the Collateral, the results of which shall be reasonably satisfactory to Bank;

(h) establishment of the Bancontrol Account and lockbox arrangements; and

(i) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

3.2 Conditions Precedent to all Credit Extensions. The obligation of Bank to make each Credit Extension, including the initial Credit Extension, is further subject to the following conditions:

(a) timely receipt by Bank of the Payment/Advance Form and Borrowing Base Certificate, together with an aging of accounts receivable and payable, as provided in Section 2.1;

(b) in Bank's sole discretion, there has not been a Material Adverse Effect;

(c) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of a Borrower's request for such Credit Extension and on the effective date of each Credit Extension as though made at and as of each such date (unless such representation or warranty specifically relates to an earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date), and no Event of Default shall have occurred and be continuing, or would exist after giving effect to such Credit Extension. The making of each Credit Extension shall be deemed to be a representation and warranty by each Borrower on the date of such Credit Extension as to the accuracy of the facts referred to in this Section 3.2.

4. CREATION OF SECURITY INTEREST.

4.1 Grant of Security Interest. Each Borrower grants and pledges to Bank a continuing security interest in all presently existing and hereafter acquired or arising Collateral in order to secure prompt repayment of any and all Obligations and in order to secure prompt performance by the Borrowers of each of their respective covenants and duties under the Loan Documents. Such security interest constitutes a valid, first priority security interest in the presently existing Collateral, and will constitute a valid, first priority security interest in Collateral acquired after the date hereof.

4.2 Delivery of Additional Documentation Required. Each Borrower shall from time to time execute and deliver to Bank, at the request of Bank, all financing statements and other documents that Bank may reasonably request, in form reasonably satisfactory to Bank, to perfect and continue the perfection of Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

4.3 Right to Inspect and Audit. The Borrowers shall permit any representative of Bank, during normal business hours and upon reasonable advance notice, to inspect, audit, examine and make extracts or copies from all books and records and other data relating to the Collateral to inspect any of a Borrower's properties, to confirm balances due on Accounts by direct inquiry to Account Debtors, and shall furnish Bank with all information regarding the business or finances of Borrower promptly upon Bank's request; provided the Borrowers shall only be obligated to reimburse Bank for the expenses for two such field audits per year.

5. REPRESENTATIONS AND WARRANTIES.

Each Borrower represents and warrants as follows:

5.1 Due Organization and Qualification. Such Borrower is a corporation duly existing under the laws of its state of incorporation and qualified and licensed to do business in any state in which the failure to be so qualified would result in a Material Adverse Effect.

5.2 Due Authorization; No Conflict. The execution, delivery, and performance of the Loan Documents are within such Borrower's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in such Borrower's Certificate of Incorporation or Bylaws, nor will they constitute an event of default under any material agreement to which such Borrower is a party or by which such Borrower is bound which would reasonably be expected to have a Material Adverse Effect. Such Borrower is not in default under any material agreement to which it is a party or by which it is bound.

5.3 No Prior Encumbrances. Such Borrower has good and marketable title to its property, free and clear of Liens, except for Permitted Liens.

5.4 Bona Fide Eligible Accounts. The Eligible Accounts are bona fide existing obligations. The property and services giving rise to such Eligible Accounts has been delivered or rendered to the account debtor or to the account debtor's agent for immediate and unconditional acceptance by the account debtor. Such Borrower has not received written notice of actual or imminent Insolvency Proceeding of any account debtor that is included in any Borrowing Base Certificate as an Eligible Account.

5.5 Merchantable Inventory. All Inventory is in all material respects of good and marketable quality, free from all material defects, except for Inventory for which adequate reserves have been made.

5.6 Intellectual Property. Such Borrower is the sole owner of its Intellectual Property, except for non-exclusive licenses granted by Borrower to its customers in the ordinary course of business. Each of the Patents is valid and enforceable, and no part of the Intellectual Property has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party. Except as set forth in the Schedule, such Borrower's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month during most recently ended fiscal quarter, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service.

5.7 Name; Location of Chief Executive Office. Except as disclosed in the Schedule, such Borrower has not done business under any name other than that specified on the signature page hereof; or, in the past five (5) years, changed its jurisdiction of formation, corporate structure, organizational type, or any organizational number assigned by its jurisdiction. The chief executive office of such Borrower is located at the address indicated in Section 10 hereof.

5.8 Litigation. Except as set forth in the Schedule, there are no actions or proceedings pending by or against Borrower or any Subsidiary before any court or administrative agency.

5.9 No Material Adverse Change in Financial Statements. All consolidated and consolidating financial statements related to the Borrowers and their Subsidiaries that Bank has received from the Borrowers fairly present in all material respects Borrower's financial condition as of the date thereof and Borrower's consolidated and consolidating results of operations for the period then ended. There has not been a material adverse change in the consolidated or the consolidating financial condition of the Borrowers and the Subsidiaries (taken as a whole) since the date of the most recent of such financial statements submitted to Bank.

5.10 Solvency, Payment of Debts. The fair salable value of the Borrowers' assets (including goodwill minus disposition costs), taken as a whole, exceeds the fair value of its liabilities; the Borrowers are not left with unreasonably small capital after the transactions in this Agreement; and the Borrowers are solvent and able to pay its debts (including trade debts) as they mature.

5.11 Regulatory Compliance. Such Borrower and each Subsidiary have met the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and no event has occurred resulting from Borrower's failure to comply with ERISA that could result in Borrower's incurring material liability. Such Borrower is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940. Such Borrower is not engaged principally, or as one of the important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations T and U of the Board of Governors of the Federal Reserve System). Such Borrower and each Subsidiary have complied with all the provisions of the Federal Fair Labor Standards Act. Such Borrower and each Subsidiary have not violated any material statutes, laws, ordinances or rules applicable to it.

5.12 Environmental Condition. To such Borrower's best knowledge, none of such Borrower's properties or assets has ever been used by such Borrower, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with applicable law; To such Borrower's best knowledge, none of such Borrowers' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute; no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by such Borrower which would reasonably be expected to have a Material Adverse Effect; and such Borrower has not received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by such Borrower resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

5.13 Taxes. Such Borrower has filed or caused to be filed all tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all taxes reflected therein.

5.14 Subsidiaries. Except as set forth on the Schedule, such Borrower does not own any stock, partnership interest or other equity securities of any Person, except for Permitted Investments.

5.15 Government Consents. Such Borrower has obtained all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of such Borrower's business as currently conducted.

5.16 Operating, Depository and Investment Accounts. Except as disclosed in the Schedule, none of such Borrower's cash is maintained or invested with a Person other than Bank.

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

6. AFFIRMATIVE COVENANTS.

Each Borrower shall do all of the following:

6.1 Good Standing. Maintain its corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which it is required under applicable law, and maintain in force all licenses, approvals and agreements, the loss of which would reasonably be expected to have a Material Adverse Effect.

6.2 Government Compliance. Meet the minimum funding requirements of ERISA with respect to any employee benefit plans subject to ERISA, and comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which would reasonably be expected to have a Material Adverse Effect.

6.3 Financial Statements, Reports, Certificates; Other Notices and Information. Deliver the following to Bank:

(a) within thirty (30) days after the last day of each month, aged listings of accounts receivable and accounts payable, together with a deferred revenue listing and a Borrowing Base Certificate signed by a Responsible Officer in substantially the form of **Exhibit C** hereto;

(b) as soon as available, but in any event within thirty (30) days after the end of each month, a Borrower prepared consolidated balance sheet, income, and cash flow statement covering such Borrower's consolidated operations during such month, prepared in accordance with GAAP, consistently applied, in a form acceptable to Bank along with a Compliance Certificate signed by a Responsible Officer in substantially the form of **Exhibit D** hereto;

(c) as soon as available, but in any event within one hundred twenty (120) days after the end of such Borrowers' fiscal year, audited consolidated financial statements of such Borrower prepared in accordance with GAAP, consistently applied, together with an unqualified opinion on such financial statements of an independent certified public accounting firm reasonably acceptable to Bank;

(d) as a condition to requesting an Advance, and for each month thereafter, as soon as available, but in any event within thirty (30) days after the last day of each month, a Borrowing Base Certificate and accounts receivable and payable agings;

(e) within thirty (30) days after the last day of each month, bank statements for any bank in which Borrower maintains an account outside of Bank;

(f) within thirty (30) days after the last day of such Borrower's fiscal year, a contact and address list in form and substance reasonably acceptable to Bank;

(g) copies of all statements, reports and notices sent or made available generally by Borrower to its security holders or to any holders of Subordinated Debt and, if applicable, all reports on Forms 10-K and 10-Q filed with the Securities and Exchange Commission;

(h) promptly upon receipt of notice thereof, a report of any legal actions pending or threatened in writing against such Borrower or any Subsidiary that could result in damages or costs to such Borrower or any Subsidiary of Five Hundred Thousand Dollars ($500,000) or more, or any commercial tort claim (as defined in the Code) acquired by such Borrower;

(i) as soon as available, but in any event no later than the earlier of (i) sixty (60) days after the end of each fiscal year and (b) ten (10) days of approval by such Borrower's board of directors, annual operating projections (including income statements, balance sheets and cash flow statements presented in a monthly format) for the upcoming fiscal year, approved by such Borrower's board of directors, which shall be in form and substance reasonably satisfactory to Bank;

(j) such budgets, sales projections, operating plans, other financial information including information related to the verification of such Borrower's Accounts as Bank may reasonably request from time to time; and

(k) promptly (and in any event within three (3) Business Days) upon such Borrower becoming aware of the existence of any Event of Default or event described in Section 8 which, with the giving of notice or passage of time, or both, would constitute an Event of Default, such Borrower shall give written notice to Bank of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default.

6.4 Audits. Upon reasonable advance notice and during normal business hours, permit Bank from time to time hereafter to audit such Borrower's Accounts and appraise Collateral at such Borrower's expense, provided that such audits will be conducted no more often than every six (6) months unless an Event of Default has occurred and is continuing.

6.5 Inventory; Returns. Keep all Inventory in good and marketable condition, free from all material defects except for Inventory for which adequate reserves have been made, maintain returns and allowances, if any, with account debtors on the same basis and in accordance with the usual customary practices of such Borrower, as they exist at the time of the execution and delivery of this Agreement, and promptly notify Bank of all returns and recoveries and of all disputes and claims, where the return, recovery, dispute or claim involves more than Two Hundred Fifty Thousand Dollars ($250,000).

6.6 Taxes . Make due and timely payment or deposit of all federal, state, and other taxes, assessments, or contributions required of it by law, and will execute and deliver to Bank, on demand, appropriate certificates attesting to the payment or deposit thereof; and make, and will cause each Subsidiary to make, timely payment or deposit of all tax payments and withholding taxes required of it by applicable laws, including, but not limited to, those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Bank with proof reasonably satisfactory to Bank indicating that such Borrower has made such payments or deposits; provided that such Borrower or a Subsidiary need not make any payment if the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP) by such Borrower.

6.7 Insurance.

(a) At its expense, keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where such Borrower's business is conducted on the date hereof, and also maintain insurance relating to such Borrower's business, ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to such Borrower's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form reasonably satisfactory to Bank, showing Bank as an additional loss payee thereof, and all liability insurance policies shall show the Bank as an additional insured and shall specify that the insurer must give at least twenty (20) days' notice to Bank before canceling its policy for any reason (or ten (10) days' notice in the case of the failure to pay any premiums) . Upon Bank's reasonable request, such Borrower shall deliver to Bank certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Bank, be payable to Bank to be applied on account of the Obligations; provided that Borrowers may retain property insurance proceeds in the aggregate amount not to exceed $250,000 in any fiscal year, which Borrowers shall apply toward the replacement or repair of destroyed or damaged property.

6.8 Operating, Depository and Investment Accounts. Beginning not later than 180 days after the Closing Date, maintain its primary depository, operating, and investment accounts with Bank. Beginning on the Closing Date, for each account that such Borrower maintains outside of Bank, such Borrower shall cause the applicable bank or financial institution at or with which any such account is maintained to execute and deliver an account control agreement or other appropriate instrument in form and substance reasonably satisfactory to Bank.

6.9 Financial Covenants.

(a) Collateral Ratio. The Borrowers on a consolidated basis shall maintain at all times a ratio of (a) Collateral Value to (b) Obligations outstanding under this Agreement of at least 1.75 to 1.00, where Collateral Value is equal to the sum of (i) Borrower's Cash on deposit with Bank and (ii) the book value of Eligible Accounts, as reported the most recent Borrowing Base Certificate delivered to Bank, provided that the Borrowers shall at all times maintain a Cash balance in account(s) with Bank of at least One Million Five Hundred Thousand Dollars ($1,500,00).

(b) Performance to Plan. The Borrowers on a consolidated basis shall have EBITDA of at least One Dollar ($1.00) for the fiscal quarter ending March 31, 2021, measured on a trailing three month basis. Thereafter, the Borrowers on a consolidated basis shall achieve EBITDA on a trailing 12-month basis, measured as of the last day of each month in calendar year 2021, and the last day of each calendar quarter thereafter, equal at least that set forth on attached Schedule 6.9.

6.10 Fortress Loan. As a condition to making any payment to Parent under the Fortress Note, cause all amounts owing to Bank under this Agreement to be repaid in full.

6.11 Intellectual Property Rights. Protect, defend and maintain the validity and enforceability of its Intellectual Property; (ii) promptly advise Bank in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to such Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

6.12 Formation or Acquisition of Subsidiaries. Notwithstanding and without limiting the negative covenants contained in Sections 7.3 and 7.7 hereof, within thirty (30) days following such Borrower forming or acquiring any direct or indirect Subsidiary, (a) cause such new Subsidiary to provide to Bank a joinder to this Agreement to cause such Subsidiary to become a co-borrower hereunder, together with such appropriate financing statements and/or control agreements, all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary that would constitute Collateral), (b) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary, in form and substance reasonably satisfactory to Bank, and (c) provide to Bank all other documentation in form and substance reasonably satisfactory to Bank that in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above.

6.13 Further Assurances. At any time and from time to time, execute and deliver such further instruments and take such further action as may reasonably be requested by Bank to effect the purposes of this Agreement.

7. NEGATIVE COVENANTS.

No Borrower may do any of the following:

7.1 Dispositions . Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer") all or any part of its business or property (including any spinoffs or divisions), other than Permitted Transfers.

7.2 Change in Business. Engage in any business other than the businesses currently engaged in by Borrower and any business substantially similar or related thereto (or incidental thereto); experience a change in a Chief Executive Officer or Chief Financial Officer unless a replacement reasonably acceptable to Bank is appointed within six (6) months of such officer no longer serving in such position; cease to conduct business in the manner that is not reasonably complementary, ancillary or otherwise related to the nature of the business operations conducted by Borrower as of the Closing Date; change the date on which its fiscal year ends; or without thirty (30) days prior written notification to Bank, change its type of corporate form of entity, relocate its chief executive office or state of incorporation or change its legal name.

7.3 Mergers or Acquisitions or Change in Control. Suffer or permit a Change in Control; or merge or consolidate, with or into any other business organization, or acquire, or permit any of its Subsidiaries to acquire, all or a material part of the capital stock or assets of another Person, or the product line or division of another Person, other than mergers or consolidations (i) of a Subsidiary which is not a Borrower into another Subsidiary or into Borrower, (ii) of a Borrower into another Borrower or (iii) to effectuate a Permitted Investment, provided that after giving effect to any of such transactions, Borrowers on a consolidated basis shall be in compliance with this Agreement.

7.4 Indebtedness. Create, incur, guarantee, assume or be or remain liable with respect to any Indebtedness, or permit any Subsidiary so to do, other than Permitted Indebtedness.

7.5 Encumbrances. Create, incur, assume or suffer to exist any Lien with respect to any of its property, or assign or otherwise convey any right to receive income, including the sale of any Accounts, except for Permitted Liens, or enter into any agreement with any Person other than Bank not to grant a security interest in, or otherwise encumber, any of the Collateral.

7.6 Distributions. Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any capital stock (other than in capital stock) at any time that an Event of Default is continuing or would exist after giving effect to such payment or distribution.

7.7 Investments. Directly or indirectly acquire or own, or make any Investment in or to any Person, other than Permitted Investments; or, subject to Section 6.8, maintain or invest any of its property with a Person other than Bank or permit any of its Subsidiaries to do so unless such Person has entered into an account control agreement with Bank in form and substance reasonably satisfactory to Bank.

7.8 Transactions with Affiliates . Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of such Borrower except for (a) transactions that are in the ordinary course of such Borrower's business, upon fair and reasonable terms that are no less favorable to such Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions between or among the Borrowers not involving any other Affiliate, (c) loans or advances to employees, officers and directors otherwise constituting a Permitted Investment, (d) so long as it has been approved by such Borrower's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation (including bonuses and the issuance of stock options), severance, or employee benefit arrangements to employees, officers, and directors of such Borrower in the ordinary course of business, (e) any tax sharing arrangements entered into in the ordinary course of business and (f) transactions set forth on the Schedule, as those agreements and instruments may be amended, modified, supplemented, extended, renewed or refinanced from time to time.

7.9 Subordinated Debt. Make any payment in respect of any Subordinated Debt, except in compliance with the terms of the subordination agreement applicable to such Subordinated Debt, or amend any provision contained in any documentation relating to the Subordinated Debt without Bank's prior written consent.

7.10 [Reserved].

7.11 Compliance. Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, fail to comply with the Federal Fair Labor Standards Act or violate any law or regulation, which violation could have a Material Adverse Effect.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an Event of Default by the Borrowers under this Agreement:

8.1 Payment Default. If a Borrower fails to pay, when due, any of the Obligations;

8.2 Covenant Default.

(a) If a Borrower fails to perform or observe any term, covenant or agreement contained (i) in Sections 6.1, 6.3, 6.4, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12 or Article VII;

(a) If a Borrower fails to perform or observe any other material term, provision, condition, or covenant contained in this Agreement or in any of the Loan Documents, or in any other present or future agreement between a Borrower and Bank and as to any default under such other term, provision, condition or covenant that can be cured, has failed to cure such default within ten days after a Borrower receives notice thereof or any officer of a Borrower becomes aware thereof; provided, however, that if the default cannot by its nature be cured within the ten day period or cannot after diligent attempts by such Borrower be cured within such ten day period, and such default is likely to be cured within a reasonable time, then such Borrower shall have an additional reasonable period (which shall not in any case exceed 30 days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default but no Credit Extensions will be made;

8.3 Material Adverse Effect. If there occurs any circumstance or circumstances that could reasonably be expected to have a Material Adverse Effect;

8.4 Attachment . If any portion of a Borrower's assets is attached, seized, subjected to a writ or distress warrant, or is levied upon, or comes into the possession of any trustee, receiver or person acting in a similar capacity, or if a Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any part of its business affairs, or if a judgment or other claim becomes a lien or encumbrance upon any portion of a Borrower's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any of a Borrower's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by a Borrower;

8.5 Insolvency. If a Borrower becomes insolvent, or if an Insolvency Proceeding is commenced by Borrower, or if an Insolvency Proceeding is commenced against a Borrower; provided however, that such Borrower, as applicable, shall have forty-five (45) days to obtain the dismissal or discharge of an Insolvency Proceeding filed commenced it;

8.6 Other Agreements. If a Borrower is in breach of any agreement (i) relating to any Indebtedness in an amount in excess of Five Hundred Thousand ($500,000) to which a Borrower is a party (which breach remains uncured after the applicable grace or notice period, if any) resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any such Indebtedness or (ii) that would reasonably be expected to have a Material Adverse Effect;

8.7 Judgments; Settlements; Fines; Penalties. If a judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand ($500,000) shall be rendered against a Borrower, or if a Borrower enters into any settlement agreement with respect to any litigation matters that results in payment obligations or liabilities incurred by such Borrower in excess of Five Hundred Thousand ($500,000); or if one or more fines, penalties or orders or decrees for the payment of money in excess of Five Hundred Thousand ($500,000) shall be rendered against a Borrower by any governmental authority; in each case, excluding amounts covered by insurance to the extent the relevant independent third party insurer has provided coverage therefor and to the extent the foregoing shall remain unsatisfied and unstayed for a period of thirty(30) days (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment, settlement, fine, penalty or orders or decree); or

8.8 Misrepresentations. If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any other Loan Document or certificate delivered to Bank by any Responsible Officer pursuant to this Agreement or to induce Bank to enter into this Agreement or any other Loan Document.

9. BANK'S RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by the Borrowers:

(a) Declare all or any portion of the Obligations, immediately due and payable (provided that upon the occurrence of an Event of Default described in Section 8.5, all Obligations shall become immediately due and payable without any action by Bank);

(b) Cease advancing money or extending credit to or for the benefit of a Borrower under this Agreement or under any other agreement between a Borrower and Bank;

(c) Make such payments and do such acts as Bank considers necessary or reasonable to protect its security interest in the Collateral. The Borrowers shall assemble the Collateral if Bank so requires, and to make the Collateral available to Bank as Bank may designate. The Borrowers authorize Bank to enter the premises where the Collateral is located, to take and maintain possession of the Collateral, or any part of it, and to pay, purchase, contest, or compromise any encumbrance, charge, or lien which in Bank's determination appears to be prior or superior to its security interest and to pay all expenses incurred in connection therewith. With respect to any of Borrower's owned premises, the Borrowers grant Bank a license to enter into possession of such premises and to occupy the same, without charge, in order to exercise any of Bank's rights or remedies provided herein, at law, in equity, or otherwise;

(d) Set off and apply to the Obligations any and all (i) balances and deposits of a Borrower held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of a Borrower held by Bank;

(e) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell (in the manner provided for herein) the Collateral. Bank is granted a license or other right, solely pursuant to the provisions of this Section 9.1, to use, without charge, a Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section 9.1, a Borrower's rights under all licenses and all franchise agreements shall inure to Bank's benefit;

(f) Dispose of the Collateral by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including a Borrower's premises) as Bank determines is commercially reasonable, and apply any proceeds to the Obligations in whatever manner or order Bank deems appropriate;

(g) Bank may credit bid and purchase at any public sale; and

(h) Any deficiency that exists after disposition of the Collateral as provided above will be paid immediately by the Borrowers.

9.2 Power of Attorney. Effective only upon the occurrence and during the continuance of an Event of Default, each Borrower irrevocably appoints Bank (and any of Bank's designated officers, or employees) as such Borrower's true and lawful attorney to:(a) send requests for verification of Accounts or notify account debtors of Bank's security interest in the Accounts; (b) notify all account debtors with respect to the Accounts or any other debtors of a Borrower to pay Bank directly; (c) sign a Borrower's name on any invoice or bill of lading relating to any Account, drafts against account debtors, schedules and assignments of Accounts, verifications of Accounts, and notices to account debtors; (d) make, settle, and adjust all claims under and decisions with respect to a Borrower's policies of insurance; (e) demand, collect, receive, sue, and give releases to any account debtor or other debtor of a Borrower for the monies due or which may become due upon or with respect to the Accounts and to compromise, prosecute, or defend any action, claim, case or proceeding relating to the Accounts; (f) settle and adjust disputes and claims respecting the accounts directly with account debtors, for amounts and upon terms which Bank determines to be reasonable; (g) sell, assign, transfer, pledge, compromise, discharge or otherwise dispose of any Collateral; (h) receive and open all mail addressed to a Borrower for the purpose of collecting the Accounts; (i) endorse a Borrower's name on any checks or other forms of payment or security that may come into Bank's possession; (j) execute on behalf of a Borrower any and all instruments, documents, financing statements and the like to perfect Bank's interests in the Accounts and file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral; and (k) do all acts and things necessary or expedient, in furtherance of any such purposes; provided however Bank may exercise such power of attorney with respect to any actions described in clause (j) above, regardless of whether an Event of Default has occurred. The appointment of Bank as a Borrower's attorney in fact, and each of Bank's rights and powers, being coupled with an interest, is irrevocable until all of the Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions hereunder is terminated.

9.3 Accounts Collection. In addition to the foregoing, at any time after the occurrence and during the continuance of an Event of Default, Bank may notify any Person owing funds to a Borrower of Bank's security interest in such funds and verify the amount of such Account. Each Borrower shall collect all amounts owing to Borrower for Bank, receive in trust all payments as Bank's trustee, and immediately deliver such payments to Bank in their original form as received from the account debtor, with proper endorsements for deposit.

9.4 Bank Expenses. If a Borrower fails to pay any amounts or furnish any required proof of payment due to third persons or entities, as required under the terms of this Agreement, then Bank may do any or all of the following: (a) make payment of the same or any part thereof; (b) set up such reserves under the Revolving Line as Bank deems necessary to protect Bank from the exposure created by such failure; or (c) obtain and maintain insurance policies of the type discussed in Section 6.7 of this Agreement, and take any action with respect to such policies as Bank deems prudent. Any amounts so paid or deposited by Bank shall constitute Bank Expenses, shall be immediately due and payable, and shall bear interest at the then applicable rate hereinabove provided, and shall be secured by the Collateral. Any payments made by Bank shall not constitute an agreement by Bank to make similar payments in the future or a waiver by Bank of any Event of Default under this Agreement.

9.5 Bank's Liability. So long as Bank complies with reasonable banking practices, Bank shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral shall be borne by the Borrowers. Bank shall in no case be liable for special, consequential or punitive damages arising out of this Agreement or any transactions contemplated by this Agreement.

9.6 Remedies Cumulative. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.7 Demand; Protest. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which a Borrower may in any way be liable.

10. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, or by email to Borrower or to Bank, as the case may be, at its addresses set forth below:

If to a Borrower:

c/o JOURNEY MEDICAL CORPORATION
9237 East Via de Ventura
Scottsdale, AZ 85258
Attn: Claude Maraoui
Nirav Jhaveri
Email: cmaraoui@jmcderm.com
njhaveri@jmcderm.com

and

c/o FORTRESS BIOTECH, INC.
2 Gansevoort Street, 9th Floor
New York, NY 10014
Attn: Robyn Hunter, CFO and Sam Berry, General Counsel
Email: rhunter@fortressbiotech.com; sberry@fortressbiotech.com

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

Alston & Bird LLP
90 Park Avenue
New York, NY 10016
Attn: Paul Hespel
Email: paul.hespel@alston.com

If to Bank:

EAST WEST BANK
2350 Mission College Boulevard, Suite 988

Santa Clara, CA 95054
Attn: James Tai
Email: james.tai@eastwestbank.com

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Jurisdiction shall lie in the State of California. BANK AND EACH BORROWER ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH OF THEM, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT, WITH COUNSEL OF THEIR CHOICE, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY RELATED INSTRUMENT OR LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTION OF ANY OF THEM. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY BANK OR BORROWER, EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY EACH OF THEM. WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Los Angeles County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Los Angeles County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Los Angeles County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS.

12.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by a Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank may without the consent of or notice to a Borrower sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder; provided that so long as no Event of Default has occurred and is continuing Bank may not assign, transfer or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits hereunder or any other Loan Documents to any Person who is (i) direct competitor of Borrower, whether as an operating company or direct or indirect parent with voting control over such operating company, or (ii) a vulture or distressed debt fund.

12.2 Indemnification. The Borrowers shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank a and a Borrower whether under this Agreement, or otherwise (including without limitation reasonable and documented attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

12.3 Time of Essence. Time is of the essence for the performance of all obligations set forth in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

12.5 Amendments in Writing, Integration. Neither this Agreement nor the Loan Documents can be amended or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

12.6 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. In the event that any signature to this Agreement or any other Loan Document is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof. Notwithstanding the foregoing, the Borrowers shall deliver all original signed documents requested by Bank no later than ten (10) Business Days following the Closing Date.

12.7 Survival. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations (other than unasserted contingent indemnification obligations) remain outstanding or Bank has any obligation to make Credit Extensions to a Borrower. The obligations of the Borrowers to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in Section 12.2 shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

12.8 Confidentiality. In handling any confidential information, Bank will exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made (a) to Bank's subsidiaries or affiliates in connection with their business with a Borrower (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 prospective transferees or purchasers of any interest in the loans (provided, however, Bank shall use commercially reasonable efforts in obtaining such prospective transferee or purchasers agreement of the terms of this provision or terms substantially similar to the terms of this provision), (c) as required by law, regulation, subpoena, or other order, (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit (in which case such Person agrees, to the extent permitted by applicable law, to use commercially reasonable efforts to inform the Borrowers thereof prior to such disclosure), (e) as Bank considers appropriate exercising remedies under this Agreement and

(f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank or (y) is disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

12.9 Patriot Act Notice. Bank notifies the Borrowers that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "Patriot Act"), it is required to obtain, verify and record information that identifies a Borrower, which information includes names and addresses and other information that will allow Bank to identify a Borrower in accordance with the Patriot Act.

13. CO-BORROWER PROVISIONS

13.1 Primary Obligation. This Agreement is a primary and original obligation of each Borrower and shall remain in effect notwithstanding future changes in conditions, including any change of law or any invalidity or irregularity in the creation or acquisition of any Obligations or in the execution or delivery of any agreement between Bank and any Borrower. Each Borrower shall be liable for existing and future Obligations as fully as if all of all Credit Extensions were advanced to such Borrower. Bank may rely on any certificate or representation made by any Borrower as made on behalf of, and binding on, all Borrowers.

13.2 Enforcement of Rights. The Borrowers are jointly and severally liable for the Obligations and Bank may proceed against one or more of the Borrowers to enforce the Obligations without waiving its right to proceed against any of the other Borrowers.

13.3 Borrowers as Agents. Each Borrower appoints the other Borrower as its agent with all necessary power and authority to give and receive notices, certificates or demands for and on behalf of both Borrowers, to act as disbursing agent for receipt of any Credit Extensions on behalf of each Borrower and to apply to Bank on behalf of each Borrower for Credit Extensions, any waivers and any consents. This authorization cannot be revoked, and Bank need not inquire as to each Borrower's authority to act for or on behalf of the Borrowers.

13.4 Subrogation and Similar Rights. Notwithstanding any other provision of this Agreement or any other Loan Document, until the Obligations have been repaid in full, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating such Borrower to the rights of Bank under the Loan Documents) to seek contribution, indemnification, or any other form of reimbursement from any other Borrower, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by such Borrower with respect to the Obligations in connection with the Loan Documents or otherwise and all rights that it might have to benefit from, or to participate in, any security for the Obligations as a result of any payment made by such Borrower with respect to the Obligations in connection with the Loan Documents or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section 13.4 shall be null and void. If any payment is made to a Borrower in contravention of this Section 13.4, such Borrower shall hold such payment in trust for Bank and such payment shall be promptly delivered to Bank for application to the Obligations, whether matured or unmatured.

13.5 Waivers of Notice. To the maximum extent permitted by applicable law, each Borrower waives any defense arising from any defense of any other Borrower, or by reason of the cessation from any cause whatsoever of the liability of any other Borrower. Bank's failure at any time to require strict performance by any Borrower of any provision of the Loan Documents shall not waive, alter or diminish any right of Bank thereafter to demand strict compliance and performance therewith. Nothing contained herein shall prevent Bank from foreclosing on the Lien of any deed of trust, mortgage or other security instrument, or exercising any rights available thereunder, and the exercise of any such rights shall not constitute a legal or equitable discharge of any Borrower. To the maximum extent permitted by applicable law, each Borrower also waives any defense arising from any act or omission of Bank that changes the scope of such Borrower's risks hereunder.

13.6 Subrogation Defenses. To the maximum extent permitted by applicable law, each Borrower hereby waives any defense based on impairment or destruction of its subrogation or other rights against any other Borrower, and under any other similar statutes now and hereafter in effect.

13.7 Right to Settle, Release.

(a) The liability of the Borrowers hereunder shall not be diminished by (i) any agreement, understanding or representation that any of the Obligations is or was to be guaranteed by another Person or secured by other property, or (ii) any release or unenforceability, whether partial or total, of rights, if any, which Bank may now or hereafter have against any other Person, including another Borrower, or property with respect to any of the Obligations.

(b) Without affecting the liability of any Borrower hereunder, Bank may (i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Obligations with respect to a Borrower, (ii) grant other indulgences to a Borrower in respect of the Obligations, (iii) modify in any manner any documents relating to the Obligations with respect to the other Borrower, (iv) release, surrender or exchange any deposits or other property securing the Obligations, whether pledged by a Borrower or any other Person, or (v) compromise, settle, renew, or extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any guarantor, endorser or other Person who is now or may hereafter be liable with respect to any of the Obligations.

13.8 Subordination. All Indebtedness of a Borrower now or hereafter arising and held by another Borrower is subordinated to the Obligations and the Borrower holding such Indebtedness shall take all actions reasonably requested by Bank to effect, to enforce and to give notice of such subordination.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

JOURNEY MEDICAL CORPORATION

By: /s/ Claude Maraoui
Name: Claude Maraoui
Title: President & CEO

JP PHARMA, INC.

By: /s/ Claude Maraoui

Name: Claude Maraoui
Title: President & CEO

EAST WEST BANK

By: _____
Name: _____
Title: _____

[SIGNATURE PAGE TO LOAN AND SECURITY AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

JOURNEY MEDICAL CORPORATION

By: _____
Name: _____
Title: _____

JP PHARMA, INC.

By: _____
Name: _____
Title: _____

EAST WEST BANK

By: /s/ James Tai
Name: James Tai
Title: Managing Director

[SIGNATURE PAGE TO LOAN AND SECURITY AGREEMENT]

Exhibit 10.5

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

BETWEEN

DERMIRA, INC.

AND

JOURNEY MEDICAL CORPORATION

DATED AS OF

MARCH 31, 2021

TABLE OF CONTENTS

EXHIBITS

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of March 31, 2021, is made by and between Journey Medical Corporation, a Delaware corporation ("Buyer"), and Dermira, Inc., a Delaware corporation ("Seller").

WHEREAS, Seller sells the pharmaceutical product that currently is marketed for sale to consumers under the trademark Qbrexza®, and in connection therewith, operates the Business (as defined herein); and

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to (a) purchase (or cause its Affiliates to purchase) from Seller the Transferred Assets (as defined herein) and (b) assume (or cause its Affiliates to assume) the Assumed Liabilities (as defined herein), in each case, upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions.

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

"Affiliate" means, with respect to any Person, any other Person that controls, is controlled by or is under common control with such Person (and for this purpose, the term control means the power to direct the management and policies of a Person (directly or indirectly), whether through ownership of voting securities, by Contract or otherwise (and the terms controlling and controlled have meanings correlative to the foregoing)). For purposes of [***], [***] and [***] shall be considered its [***]. For purposes of [***], [***] shall be considered its [***].

"Agreement" has the meaning set forth in the preamble.

"Allocation Statement" has the meaning set forth in Section 3.4.

"Ancillary Agreements" means the Assignment and Assumption Agreement, the Bill of Sale, the IP Assignment Agreement, the Confidentiality Agreement, the Transition Services Agreement and the other documents, instruments, exhibits, annexes, schedules or certificates contemplated hereby and thereby.

"ANDA" means an abbreviated new drug application submitted to the FDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act and any amendments or supplements thereto.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement, in the form attached hereto as Exhibit A.

"Assumed Liabilities" has the meaning set forth in Section 2.3(a).

"Auditors" has the meaning set forth in Section 3.2(c)(iii).

"Authorized Generic" means a pharmaceutical product that would otherwise satisfy the requirements for a Generic Product under this Agreement, but which (a) is or will be manufactured, sold or otherwise distributed under the Product NDA and is (b) (i) manufactured, sold or otherwise distributed by a Third Party whose operations relating to such pharmaceutical product use rights received, directly or indirectly, from the Buyer pursuant to a license, settlement or other agreement or (ii) otherwise authorized, directly or indirectly, by the Buyer. For the avoidance of doubt, any pharmaceutical product that is manufactured, sold or otherwise distributed under an ANDA shall not be deemed to be an "Authorized Generic".

"Bill of Sale" means the Bill of Sale, in the form attached hereto as Exhibit B.

"Business" means (a) the commercialization, manufacturing, packaging, distributing, marketing, storing, managing, importing, exporting and selling of the Product as conducted by Seller as of the Closing Date and (b) the development by Seller as of the Closing Date of (i) [***] or (ii) [***] (but with respect to (ii), solely to the extent performed under the [***] or otherwise related to the following indications: [***] [***].

"Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York or Indianapolis, Indiana are permitted or required to close by applicable Law.

"Buyer" has the meaning set forth in the preamble.

"Buyer Fundamental Representations" means the representations and warranties made in Section 6.1(a) (*Buyer's Organization; Good Standing*), Section 6.2 (*Authority; Enforceability*), Section 6.3(ii) (*No Conflict*) and Section 6.7 (*No Brokers*).

"Buyer Indemnified Parties" has the meaning set forth in Section 11.2.

"Buyer Officer's Certificate" has the meaning set forth in Section 9.3(a).

"Calendar Quarter" shall mean the three-month period commencing on January 1, April 1, July 1, and October 1 during a given Calendar Year (defined below).

"Calendar Year" shall mean the twelve-month period commencing on January 1 and ending on December 31 of a given year.

"Closing" and "Closing Date" have the respective meanings set forth in Section 4.1.

"Closing Payment" has the meaning set forth in Section 3.1.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Combination Product" has the meaning set forth in Section 3.2(i)(ii)(1).

"Commercialization and Medical Materials" has the meaning set forth in Section 2.2(a)(iv).

"Commercially Reasonable Efforts" means, (a) with respect to a referenced obligation or activity other than the development or commercialization of a pharmaceutical product, such efforts that are consistent with the efforts normally used by a comparable pharmaceutical company in the fulfilment of such an obligation or performance of such an activity, and (b) with respect to a referenced obligation or activity relating to development or commercialization of a pharmaceutical product, such efforts consistent with the efforts normally used by a comparable pharmaceutical company in the development or commercialization of a pharmaceutical product at a similar stage in its development or commercialization, taking into account, as applicable, for purposes of clause (b): the commercial and market potential of the product; competitiveness of the marketplace (including the existence and developmental stages of alternative products); the likelihood of receipt of regulatory approval and any applicable actual or anticipated labeling; status of intellectual property coverage, regulatory exclusivity, or proprietary position; product profile, safety, and efficacy; profitability (including pricing and reimbursement status achieved or likely to be achieved and costs of producing finished goods); cost of further development or commercialization, time required for development or profitability; and any applicable regulatory or legal issues; provided, however, that for purposes of clause (b) Buyer may not take into account or consider in any manner the payments that could be due and owing to Seller pursuant to the terms of this Agreement.

"Compound" means [***].

"Confidentiality Agreement" has the meaning set forth in Section 7.3.

"Contract" means any written legally binding contract, subcontracts, agreement, instrument, lease, license, commitment, sales and purchase orders, and other instruments, arrangements or understandings of any kind, together with amendments, modifications and supplements thereto.

"Control" means, with respect to any document, information, material or intellectual property right, possession of the right, whether directly or indirectly, and whether by ownership, license or otherwise, to sell, transfer or assign or grant a license, sublicense or other right (including the right to reference any regulatory documentation) to or under such document, information, material, or intellectual property right to the extent permitted under applicable law and as provided for herein without violating the terms of any agreement or other arrangement with any Third Party.

"Covers" means, with respect to intellectual property and a thing or method, such as a referenced product, activity or service, that such intellectual property reads on, encompasses, or otherwise would be infringed or misappropriated by the unauthorized making, use, sale, offer for sale, sale, copying, distribution, display, practice, performance, import, export, lease or other disposition, of such thing or method.

"COVID-19" means COVID-19 or SARS-COV-2, including any future resurgence or evolutions or mutations thereof and/or any related or associated disease outbreaks, epidemics and/or pandemics.

"COVID-19 Measures" means any quarantine, "shelter in place," "stay at home," workforce reduction, social distancing, shut down, closure, safety or similar Law, directive, guidelines or recommendations promulgated by any industry group or any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to COVID-19, including any Law passed by any Governmental Authority in response to COVID-19.

"Deductible" has the meaning set forth in Section 11.4(b).

"Development Product" means a prescription pharmaceutical product developed by or on behalf of Buyer that (a) [***] and [***] or (b) [***] as an active ingredient and is approved by the FDA for the treatment of any indication.

"Encumbrance" means, any mortgage, charge, lien, security interest, easement, right of way, pledge or encumbrance of any kind.

"Enforceability Exceptions" has the meaning set forth in Section 5.2.

"Evercore" has the meaning set forth in Section 5.9.

"Excluded Actions" has the meaning set forth in Section 2.2(b)(xiv).

"Excluded Assets" has the meaning set forth in Section 2.2(b).

"Excluded Contracts" has the meaning set forth in Section 2.2(b)(x).

"Excluded Liabilities" has the meaning set forth in Section 2.3(b).

"Excluded Taxes" means without duplication, (i) all Taxes of Seller; (ii) all Taxes relating to the Business, the Transferred Assets or the Assumed Liabilities for any Pre-Closing Tax Period (determined in the case of a Proration Period in accordance with Section 8.4(b)); (iii) all Taxes related to the Excluded Assets or Excluded Liabilities for any taxable period; (iv) Taxes of any Affiliate of Seller of any kind or description (including any Liability for Taxes of Seller or any Affiliate of Seller that becomes a Liability of Buyer, including under any common law doctrine of de facto merger or as transferee or successor liability, or otherwise by operation of contract (other than a contract entered into in the ordinary course of business the primary purpose of which is not Tax) or Law), in each case, that relate to an event or transaction occurring prior to the effective time on the Closing Date; (v) any bulk sales taxes of Seller that were due and payable in the Pre-Closing Tax Period and, as a result of Seller's non-payment thereof, remain due and payable; and (vi) Transfer Taxes for which Seller is liable under Section 8.4(a); provided, however, that Excluded Taxes shall not cover any withholding Taxes under Section 3.5(b).

"Exhibits" means, collectively, the Exhibits referred to throughout this Agreement.

"FDA" means the U.S. Food and Drug Administration.

"Finished Goods" means the Product packaged, labeled and ready for distribution and sale in finished form.

"First Initial Sales-Based Payment Term" shall have the meaning set forth in Section 3.2(b)(i).

"Fraud" means failure of Seller's representations and warranties in ARTICLE V hereof to be accurate in any material respect; provided that at the time such representation and warranty was made, one or more of the individuals listed in the definition of "Knowledge" had actual knowledge (as opposed to constructive knowledge) that such representation and warranty was inaccurate in a material respect with the specific intent that Buyer rely thereon to its detriment.

"Generic Product" means with respect to a given Milestone Product in a given country, a product sold by a Third Party that is not an Authorized Generic, and (a) contains the Compound, (b) is approved by the Regulatory Authority in such country for use in such country for the same indication(s) as such Milestone Product; and (c) is deemed by the applicable Regulatory Authority to be substitutable or interchangeable for, or therapeutically equivalent or bioequivalent to, such Milestone Product by healthcare practitioners, reimbursement organizations, or pharmacists in such country.

"Governmental Authority" means any supra-national, federal, foreign, national, state, county, local, municipal or other governmental, regulatory or administrative authority, agency, commission or other instrumentality, any court, tribunal or arbitral body with competent jurisdiction.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations thereunder.

"Indemnified Party" has the meaning set forth in Section 11.5(a).

"Initial Sales-Based Payment" has the meaning set forth in Section 3.2(b)(i).

"Initial Sales-Based Payment Term" has the meaning set forth in Section 3.2(b)(i).

"Intellectual Property" means all intellectual property that is Controlled by Seller as of the Closing Date (including all worldwide rights, title and interests associated with or arising out of such intellectual property) that (a) is exclusively related to the Business as of the Closing Date and/or (b) exclusively Covers [***] or [***], including: (i) the Patents; (ii) the Know-How; (iii) the Trademarks and Domain Names and (iv) rights in works of authorship (including advertisements and publications), copyrights, software, database rights, including registrations, applications, renewals and extensions of any or all of the foregoing.

"Interest Rate" has the meaning set forth in Section 3.2(a).

"Inventory" means all inventories, wherever located, including all supplies, raw materials, bulk drug substances, work-in-progress, Finished Goods and packaging and labeling materials, in each case, exclusively related to [***], [***] or the Business.

"Inventory Statement" has the meaning set forth in Section 2.2(a)(iii).

"IP Assignment Agreement" means the IP assignment agreement, in the form attached hereto as Exhibit C.

"Know-How" means all existing and available technical information, know-how and data, including, but not limited to, inventions (whether patentable or not), patent disclosures, discoveries, trade secrets, specifications, instructions, processes and formulae, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data, in each case, exclusively relating to the Product or the Development Product.

"Knowledge" of Seller or Buyer, as the case may be, means all such facts, circumstances or other information, of which with respect to Seller, the applicable Person listed on Section 1.1(a) of the Seller Schedules or with respect to Buyer, Claude Maraoui or Ramsey Alloush, as applicable, is actually aware or should be aware after reasonable inquiry of such Person's direct reports.

"Law" means any applicable law, judgment, order, decree, statute, ordinance, rule, code, regulation, directive or other requirement or rule of law enacted, issued or promulgated by any Governmental Authority.

"Liability" means any debt, liability, claim, expense, commitment or obligation of whatever kind, whether direct or indirect, accrued or fixed, absolute or contingent, matured or not or determined or determinable.

"Licensed Intellectual Property" means all Intellectual Property that is Controlled, but not owned (in whole or in part) by Seller or any of its Affiliates as of the Closing Date.

"LOE Country" shall have the meaning set forth in Section 3.2(b)(iv).

"LOE Milestone Product" shall have the meaning set forth in Section 3.2(b)(iv).

"Loss of Exclusivity" means, with respect to a Milestone Product that is being marketed or sold in a given country, a condition in which one or more Third Parties launches, sells or otherwise distributes a Generic Product in such country, and such Generic Product accounts for [***] ([***]%) or more of aggregate sales of [***] and [***] in [***] in [***] or [***] to be mutually agreed between Buyer and Seller [***] and [***] to be mutually agreed between Buyer and Seller [***] in [***].

"Losses" means any and all damages, losses, Liabilities, judgments, penalties, costs and expenses actually suffered or incurred and paid (including reasonable legal fees and expenses incurred in investigating and/or prosecuting any claim for indemnification).

"[***]" has the meaning set forth in [***].

"[***]" means that certain [***], dated as of [***], by and between [***] and [***].

"Material Adverse Effect" means a material adverse effect on the financial condition or results of operations of the Business, taken as a whole; provided, however, that any adverse effect arising out of, resulting from or attributable to (a) an event or circumstances or series of events or circumstances affecting (i) the U.S. (or any other country or jurisdiction in which the Business or Seller operates) or the global economy generally or capital, financial, banking, credit or securities markets generally, including changes in interest or exchange rates, (ii) political conditions generally of the U.S. or any other country or jurisdiction in which the Business or Seller operates or (iii) any industry generally in which the Business or Seller or any customer thereof operates or in which products or services of the Business are used or distributed, (b) the negotiation, pendency, announcement or consummation of the transactions contemplated by, or the performance of obligations under, this Agreement or any other Transaction Agreement, including adverse effects related to compliance with the covenants or agreements contained herein, the failure to take any action as a result of any restrictions or prohibitions set forth herein or the identity of Buyer or its Affiliates, and any adverse effect proximately caused by (i) shortfalls or declines in revenue, margins or profitability, (ii) threatened or actual loss of, or disruption in, any customer, supplier, vendor, employee or landlord relationships or (iii) loss of any personnel, (c) any changes in applicable Law or U.S. GAAP, or accounting principles, practices or policies that Seller required to adopt, or the enforcement or interpretation thereof, (d) actions specifically permitted to be taken or omitted pursuant to this Agreement or actions taken or omitted at the request or with the consent of Buyer, (e) the effect of any action taken by Buyer or its Affiliates with respect to any transaction contemplated hereby or with respect to Seller or any of its Affiliates, (f) the occurrence of any act of God or other calamity or force majeure events (whether or not declared as such), including any strike, labor dispute, civil disturbance, embargo, cyber-attack or malware attack, pandemic (including the COVID-19 pandemic, and any future resurgence, or evolutions or mutations, of COVID-19 or related disease outbreaks, epidemics or pandemics), natural disaster, fire, flood, hurricane, tornado, or other weather event, (g) any hostilities, acts of war (whether or not declared), sabotage, terrorism or military actions, or any escalation or worsening of any such hostilities, act of war, sabotage, terrorism or military actions, (h) any failure to meet internal or published projections, estimates or forecasts of revenues, earnings, or other measures of financial or operating performance for any period (provided, that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded), or (i) any adverse change or effect that is cured before the Closing shall not, in any such case, constitute or be deemed to contribute to a Material Adverse Effect, and otherwise shall not be taken into account in determining whether a Material Adverse Effect has occurred or would be reasonably likely to occur; provided further, that, in the case of clause (a), the event or circumstance referred to therein does not disproportionately adversely affect the Business, taken as a whole, as compared to other comparable companies in the industries in which the Seller operates.

"Milestone" has the meaning set forth in Section 3.2(a).

"Milestone Abandonment Notice" has the meaning set forth in Section 3.2(d)(i).

"Milestone Notice" has the meaning set forth in Section 3.2(a).

"Milestone Payment" has the meaning set forth in Section 3.2(a).

"Milestone Payment Date" has the meaning set forth in Section 3.2(a).

"Milestone Product" means (a) [***], (b) [***] and (c) [***].

"Milestone Product Parties" means, collectively, Buyer, its Affiliates and/or its or their respective partners, licensees, and/or sublicensees, and any assignees and/or successors of any of the foregoing with respect to rights to a Milestone Product, or any other Person who receives from any of the foregoing rights for the development, manufacturing and/or commercialization of any Milestone Product or any other Person that has been delegated responsibility for achieving a Milestone for which a Milestone Payment must be paid, and each, an "Milestone Product Party."

"NDC" means a national drug code as issued by the FDA.

"Net Sales" has the meaning set forth in Section 3.2(i)(i).

"Non-Party Affiliates" has the meaning set forth in Section 12.19.

"Non-Transferable Asset" has the meaning set forth in Section 2.4(a).

"Open Claims" has the meaning set forth in Section 8.7.

"Ordinary Course of Business" means the ordinary and usual course of normal day to day operations of the Business through the date hereof consistent with past practice (giving effect to any adjustments and modifications thereto reasonably necessary and reasonably taken in response to or as a result of the COVID-19 pandemic). Notwithstanding anything contrary contained herein, the definition of Ordinary Course of Business shall not include: "channel stuffing" or discounting products beyond what is commercially reasonable and consistent with past practice (giving effect to any adjustments and modifications thereto reasonably necessary and reasonably taken in response to or as a result of the COVID-19 pandemic).

"Outside Date" has the meaning set forth in Section 10.1(d).

"Party" or "Parties" means the Parties to this Agreement.

"Patents" means (a) the patent applications or patents in Exhibit E; (b) any continuations, divisionals, or other patent applications that claim priority to any of the patent applications or patents in Exhibit E or that share a common claim of priority therewith; (c) any patents issuing on any such patent applications (of either (a) or (b)); (d) any substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents in (c) or listed in Exhibit E; (e) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or or restorations of such patents (referenced in (d)), including all rights in any such patent

applications or patents (in (a)-(e)), in each case, whether domestic or foreign, including all rights of priority, rights to file and prosecute, and the like.

"Permits" means all consents, approvals, authorizations, certificates, filings, notices, permits, concessions, registrations, franchises, licenses or rights of or issued by any Regulatory Authority or other Governmental Authority, including Regulatory Approvals.

"Permitted Encumbrances" means: (i) Encumbrances for Taxes, assessments and charges or levies of any Governmental Authority not yet delinquent or that are being contested in good faith by appropriate Proceedings or that may thereafter be paid without penalty; (ii) Encumbrances that do not materially impair the ownership or use of assets to which they relate; (iii) Encumbrances imposed by applicable Law (including materialmen's, mechanics', carriers', workmens' and repairmen's liens and transfer restrictions imposed by national, federal or state securities laws); (iv) Encumbrances imposed in the Ordinary Course of Business that are not yet due and payable, which are being contested in good faith or which are securing obligations or Liabilities that are not material to the applicable Transferred Asset; (v) pledges or deposits to secure obligations under applicable Law to secure public or statutory obligations; (vi) liens, title retention arrangements or deposits to secure the performance of bids, trade contracts (other than for borrowed money), conditional sales contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the Ordinary Course of Business; and (vii) other Encumbrances that do not, and would not reasonably be expected to, materially detract from the value of any of the asset, right or property to which they relate or that do not materially interfere with the use of such asset, right or property as currently used.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, business association, organization, Governmental Authority or other entity.

"Personal Information" means, in addition to any definition for any similar term (e.g., "personal data" or "personally identifiable information" or "PII") provided by applicable Laws, all information that identifies, could be used to identify or is otherwise associated with an individual person (including employees), whether or not such information is directly associated with an identified individual person.

"PIV Challenge" has the meaning set forth in Section 2.3(a)(iv).

"Pre-Closing Tax Period" means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such taxable period ending on and including the Closing Date.

"Proceeding" means any civil, criminal, judicial, administrative or arbitral actions, suits, hearings, litigation, proceedings (public or private), claims or investigations, in each case by or before a Governmental Authority.

"Product" means [***].

"Product Liabilities" means all claims, Liabilities and Proceedings related to or arising from actual or alleged harm, injury, damage or death to Persons, or damage to property or businesses, including the Business, irrespective of the legal theory asserted, and resulting from or

alleged to result from the use, sale or manufacture of any of the Product or the Development Product.

"Product NDA" means [***], including all amendments, supplements, variations, extensions and renewals thereof.

"Proration Period" has the meaning set forth in Section 8.4(b).

"Purchase Price" has the meaning set forth in Section 3.1.

"Records" has the meaning set forth in Section 2.2(a)(iv).

"Regulatory Approvals" means with respect to the applicable Milestone Product in the applicable regulatory jurisdiction, all permits, licenses, certificates, approvals, clearances, or other authorizations of or recognized by the applicable Regulatory Authority necessary to conduct clinical trials of, manufacture, distribute, market, sell and/or use such Milestone Product in such regulatory jurisdiction in accordance with applicable Law (including NDAs, INDs, 510(k)s, 505(b)(2)s or their foreign equivalents, and pricing and reimbursement approvals, and all supplements and amendments thereto).

"Registered Intellectual Property" has the meaning set forth in Section 5.13(a).

"Regulatory Authority" means any applicable supranational, federal, foreign, national, regional, state, provincial, local or municipal regulatory agencies, departments, bureaus, commissions, councils or other Governmental Authority (including the FDA) regulating or otherwise exercising authority with respect to any of the Milestone Products.

"Representatives" means the directors, officers, employees, agents, subsidiaries or advisors (including attorneys, accountants, investment bankers, financial advisers and other consultants and advisors) of the specified party hereto.

"Rose U Related Agreements" means (i) that certain [***], dated as of [***], by and between [***] [***] and (ii) that certain [***], dated as of [***], by and between [***]and [***].

"Sales-Based Payment Term" has the meaning set forth in Section 3.2(b)(ii).

"Sales-Based Payment" has the meaning set forth in Section 3.2(b)(ii).

"Sales-Based Payment Date" has the meaning set forth in Section 3.2(b)(iii).

"Schedules" means the Seller Schedules.

"SEC" means the United States Securities and Exchange Commission.

"Seller" has the meaning set forth in the preamble.

"Seller Fundamental Representations" means the representations and warranties of Seller set forth in Section 5.1(a) (*Seller Organization; Good Standing*), Section 5.2 (*Authority;*

Enforceability), Section 5.3(ii) (*No Conflicts*), Section 5.5 (*Title to Transferred Assets*), and Section 5.9 (*Brokers*).

"Seller Indemnified Parties" has the meaning set forth in Section 11.3.

"Seller Intellectual Property" means all Intellectual Property that is owned (in whole or in part) by Seller or any of its Affiliates as of the Closing Date.

"Seller Licensed Intellectual Property" means, collectively: (a) all (i) patent applications or patents, (ii) any continuations, divisionals, or other patent applications that claim priority to any of the patent applications or patents in subsection (i) or that share a common claim of priority therewith, (iii) any patents issuing on any such patent applications (of either (i) or (ii)), (iv) any substitutions, reexaminations, reissues, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents in (i)-(iii), (v) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or or restorations of such patents (referenced in (iv)), including all rights in any such patent applications or patents (in (i)-(v)), in each case, whether domestic or foreign, including all rights of priority, rights to file and prosecute, and the like; and (b) all technical information, know-how and data, including, but not limited to, inventions (whether patentable or not), patent disclosures, discoveries, trade secrets, specifications, instructions, processes and formulae, including all biological, chemical, pharmacological, biochemical, toxicological, pharmaceutical, physical, safety, quality control, preclinical and clinical data, in each case of (a) and (b), Controlled (consistent with the modified definition below) by Seller as of the Closing Date and which is not Intellectual Property, that is necessary for, or then-currently used by Seller in connection with, the manufacturing or sale of the Product. For clarity, solely for purposes of this definition, the definition of "Control" shall be modified such that any intellectual property right that is licensed or sublicensed by Seller that would otherwise be considered to be under the "Control" of Seller shall not be deemed to be under the "Control" of Seller if the application of such definition in the context of any licenses or sublicenses granted to Buyer under this Agreement would require Seller to provide any consideration to any Third Party or make any additional payments or royalties to a Third Party in connection with such license or sublicense grant unless and to the extent Buyer agrees to pay and does in fact pay such consideration, payments or royalties, after the Closing. Upon Seller becoming aware of any such payment obligations, Seller will provide Buyer with written notice of any such payment obligations and reasonably cooperate in the provision of such information.

"Seller Officer's Certificate" has the meaning set forth in Section 9.2(a).

"Seller Schedules" means, collectively, the disclosure schedules, dated as of the date hereof, delivered by Seller to Buyer, as supplemented or amended in accordance with this Agreement, which forms a part of this Agreement.

"Seller Special Representations" means Section 5.8 (*Regulatory Approvals*) and Section 5.13 (*Intellectual Property*).

"Seller NDC Numbers" means [***] and [***].

"Straddle Period" means any taxable period that begins on or before and ends after the Closing Date.

"Subsidiary" means [***], a [***] organized under the laws of [***] and a [***].

"Tax(es)" means all federal, state, local and non-U.S. taxes, including income, gross receipts, license, excise, sales, use, transfer, registration, value added, severance, stamp, environmental, customs duties, franchise, escheat, profits, withholding, real property, personal property or other taxes of any kind whatsoever that may be imposed by any Governmental Authority together with all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Authority in connection therewith.

"Tax Return" means any report, return, election, notice, estimate, declaration, information statement and other forms and documents (including all schedules, exhibits and other attachments thereto and including all amendments thereof) relating to and filed or required to be filed with a taxing authority in connection with any Taxes (including estimated Taxes).

"Territory" means all countries of the world other than [***].

"Third Party" means any Person, other than the Parties and their Affiliates.

"Third Party Claim" has the meaning set forth in Section 11.5(a).

"Third Party Compensation" has the meaning set forth in Section 3.2(b)(v).

"Third Party Consents" has the meaning set forth in Section 7.6.

"Third Party Rights" has the meaning set forth in Section 2.4(b).

"Trademarks and Domain Names" means all trademarks, service marks, trade names, certification marks, service names, industrial designs, brand marks, trade dress rights, identifying symbols, logos, emblems, signs, insignia and domain names listed on Exhibit F, including all goodwill therein and any trademark applications or registrations for the foregoing.

"Transaction Agreements" means this Agreement and the Ancillary Agreements.

"Transaction Dispute" has the meaning set forth in Section 12.11(a).

"Transferred Assets" has the meaning set forth in Section 2.2(a).

"Transferred Contracts" has the meaning set forth in Section 2.2(a)(i).

"Transferred Inventory" has the meaning set forth in Section 2.2(a)(iii).

"Transferred Records" has the meaning set forth in Section 2.2(a)(iv).

"Transferred Regulatory Documentation" has the meaning set forth in Section 2.2(a)(vii).

"Transfer Taxes" has the meaning set forth in Section 8.4(a).

"Transition Services" has the meaning set forth in Section 3.2(f).

"Transition Period" has the meaning set forth in Section 3.2(f).

"Update Report" has the meaning set forth in Section 3.2(c)(i).

"U.S." or "U.S.A." means the United States of America.

"U.S. GAAP" means U. S. Generally Accepted Accounting Principles.

"Willful Breach" means a breach that is a consequence of an act or omission knowingly undertaken or omitted by the breaching Party with the intent of causing a breach of this Agreement.

ARTICLE II

SALE AND PURCHASE OF TRANSFERRED ASSETS

Section 2.1. Purchase and Sale of Assets. Upon the terms and subject to the conditions of this Agreement, and subject to Section 2.4, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller all right, title and interest of Seller in, to and under the Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 2.2. Transferred Assets; Excluded Assets.

(a) The term "Transferred Assets" means the following assets, rights or interests of Seller:

(i) the Contracts listed on Exhibit D (the "Transferred Contracts");

(ii) all accounts receivable of Seller relating to (A) [***] or (B) [***];

(iii) all Inventory, including all Finished Goods, in each case, existing as of the effective time on the Closing Date, as set forth in the inventory statement attached hereto as Exhibit H (the "Inventory Statement"), as and to the extent such inventory complies with the requirements set forth in the Inventory Statement (it being understood that the Finished Goods shall constitute Transferred Inventory solely to the extent they [***]) (collectively, the "Transferred Inventory");

(iv) copies of all books and records, including customer, supplier and consultant lists, customer relationship management data, account lists, distribution lists, sales history, development plans and life cycle management data, correspondence (in all cases, in any form or medium), non-clinical, research and/or development-related notes, studies, records, reports and other documents or data (collectively, "Records"), in each case, exclusively related to the Business, the Product or the Development Product, other than any Excluded Assets, and to the extent in the possession or Control of Seller (collectively, the "Transferred Records");

(v) all rights to causes of action, lawsuits, judgments, claims, counterclaims, rights of recovery and demands exclusively related to the Business, the Product or the Development Product, other than the Excluded Actions;

(vi) (A) all labeling, advertising, marketing, sales and promotional materials (including television, radio and print content and materials), point of sale materials and website content, (B) all consumer and end-user information, (C) materials used for medical education activities and medical informational services, (D) training materials, (E) healthcare provider payor and consumer market research, and (F) investigator sponsored study agreements, in each case to the extent (x) exclusively related to the Business and (y) transferable in compliance with applicable Law (the "Commercialization and Medical Materials");

(vii) all (A) applications, submissions, registrations, or notifications submitted to a Regulatory Authority with a view to the obtaining, updating or maintaining of any Regulatory Approval, in each case including any investigational medicinal product dossier relating to the Product or the Development Product (including, for clarity, INDs), (B) correspondence with or to Regulatory Authorities (including Regulatory Approval letters, minutes and official contact reports relating to any communications with any Regulatory Authorities) with respect to the assets described in clause (A) above, (C) records contained in the pharmacovigilance and study databases, all adverse drug experience or reaction reports and associated documents, investigations of adverse drug experience or reaction reports, and any other information relevant to the assessment of safety or benefit-risk ratios, (D) non-clinical, clinical and other files, writings, notes, studies, reports and other documents or data contained or referenced in or supporting any of the foregoing, in each case, that were acquired, developed, compiled, collected or generated by Seller or by any Third Party on behalf of Seller, in each case, to the extent exclusively related to the Business, the Product or the Development Product and (E) all Regulatory Approvals for the Product, including the Product NDA (the "Transferred Regulatory Documentation");

(viii) all Permits exclusively used or held for use in the conduct of the Business, the Product or the Development Product, to the extent transferable;

(ix) the Intellectual Property, including any applicable intellectual property rights in the Product, the Development Product, Transferred Records, Commercialization and Medical Materials and the Transferred Regulatory Documentation;

(x) all Non-Transferable Assets that are subsequently assigned or transferred to Buyer pursuant to Section 2.4;

(xi) Seller's labeler code for the Product and the Seller NDC Numbers; and

(xii) all goodwill associated with any of the assets described in the foregoing clauses.

(b) Seller and Buyer expressly agree and acknowledge that the Transferred Assets will not include any assets of any kind, nature, character or description (whether real, personal or mixed, whether tangible or intangible, whether

absolute, accrued, contingent, fixed or otherwise, and wherever situated) that is not expressly included in the definition of "Transferred Assets" in Section 2.2(a). For clarity, the "Transferred Assets" do not include the following assets, rights or interests of Seller collectively, the "Excluded Assets"):

(i) all personal property or personal productivity equipment (including laptops, personal computers, tablets, printers and mobile devices) used by any employees of Seller in the conduct of the Business;

(ii) the following Records: (A) personnel records; (B) Records to the extent relating to any Excluded Asset or Excluded Liability, (C) Records (including accounting Records and Tax Returns) relating to (1) Taxes paid or payable by Seller and all financial and Tax Records relating to the conduct of the Business that form part of Seller's general ledger or otherwise constitute accounting Records or (2) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to Seller, (D) file copies of the Records retained by Seller, (E) sales representative call notes, (F) headquarter personnel notes, (G) all privileged materials; and (H) reports and financial statements prepared or received by Seller or its Affiliates relating to the financial condition of the Business.

(iii) all accounts receivable of Seller relating to sales of the Product made prior to the effective time on the Closing Date, provided that such sales were made in accordance with the terms of Section 5.15;

(iv) all equity interests in the Subsidiary;

(v) all cash and cash equivalents;

(vi) any Contracts or other arrangements related to employees or employment matters, including any and all proprietary materials used for Seller's human resource program and supporting documentation thereto, and all cash and other assets of or relating to any employee benefit plan, program or arrangement or related trust (including any pension and savings plan assets) in which any employees of Seller participate;

(vii) all rights of Seller under this Agreement and the other Transaction Agreements;

(viii) all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders;

(ix) all electronic mail;

(x) all Contracts other than the Transferred Contracts ("Excluded Contracts");

(xi) all claims, rights or interests of Seller in or to any Tax refund, deposit, prepayment, credit, attribute or other Tax asset attributable to Excluded Taxes or otherwise attributable to a Pre-Closing Tax Period;

(xii) (A) all records and reports prepared or received by Seller in connection with the sale of the Business and the transactions contemplated hereby, including all analyses, financial statements, including balance sheets and projections relating to the Business or Buyer so prepared or received; (y) all confidentiality agreements with prospective purchasers of the Business or any portion thereof, and all bids and expressions of interest received from Third Parties with respect to the Business;

(xiii) the lease for the headquarters at 275 Middlefield Road, Menlo Park, CA;

(xiv) any claims, causes of action, lawsuits, judgments, privileges, counterclaims, defenses, demands, right of recovery, rights of set-off, rights of subrogation and all other rights of any kind, in each case to the extent arising from the Excluded Assets or the Excluded Liabilities (the "Excluded Actions")

(xv) Non-Transferable Assets, subject to Section 2.4; and

(xvi) all computer hardware, software and networks owned by Seller.

(c) License to Buyer. Seller hereby grants to Buyer a [***] under the [***], for Buyer to use solely in connection with [***] provided, that with respect to [***], Buyer [***]; provided further, that, Seller shall promptly respond to Buyer's reasonable requests for information regarding [***] in a manner sufficient for Buyer to comply with its obligations under this Section 2.2(c) ([***]). The Parties acknowledge and agree that [***] is solely intended to grant Buyer [***], and that this license does not require Seller to [***].

Section 2.3. Assumption of Certain Liabilities and Obligations.

(a) On the terms and subject to the conditions set forth in this Agreement and subject to Section 2.4, effective as of the effective time on the Closing Date, Buyer shall assume, become responsible for, and thereafter timely pay, perform and otherwise discharge, in accordance with their respective terms, all Liabilities of Seller, to the extent arising out of or in connection with or related to the Business to the extent, except as otherwise expressly set forth to the contrary below, arising or occurring on or after the effective time on the Closing Date (whether accrued or unaccrued, fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable as of the effective time on the Closing Date), including the following Liabilities (collectively, the "Assumed Liabilities"):

(i) all Liabilities arising from any patent infringement claim or Proceeding brought by any Third Party, including any Governmental Authority, on or after the effective time on the Closing Date, in all cases including such Liabilities related to Products sold on or after the effective time on the Closing Date by or on behalf of Buyer or its Affiliates;

(ii) all Liabilities arising from any Governmental Authority action or notification filed by a Governmental Authority initiated on or after the effective time on the

Closing Date, related to Products sold on or after such time by or on behalf of Buyer or its Affiliates;

(iii) [***] (the "PIV Challenge") and all Liabilities arising therefrom, [***];

(iv) all Liabilities arising under the Transferred Contracts, including all Liabilities for accounts payable, accrued and unaccrued expenses and similar items, in each case, to the extent that they arise or are to be performed or completed on or after the effective time on the Closing Date;

(v) all Liabilities arising out of or relating to the Products or Development Products made, sold or otherwise exploited on or after the effective time on the Closing Date, or made prior to such time and comprising Transferred Inventory, including all Liabilities for product warranty service claims or Product Liabilities arising on or after the effective time on the Closing Date relating to such Products, Development Products or Transferred Inventory;

(vi) all Liabilities for Taxes to the extent relating to the Business for all taxable periods (or portions thereof), beginning after the effective time on the Closing Date (determined in the case of a Proration Period in accordance with Section 8.4(b));

(vii) any other Liability, obligation or commitment, but solely to the extent arising from the Business on or after the effective time on the Closing Date or the ownership, sale, lease, use or misuse of any of the Transferred Assets or the conduct of the Business on or after the effective time on the Closing Date; and

(viii) any other Liability of Buyer to the extent indicated as such in the Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Excluded Liabilities set forth in Section 2.3(b)).

(b) Except to the extent expressly included in the Assumed Liabilities, Buyer will not assume or be responsible or liable for any Liabilities of Seller, including the following (collectively, the "Excluded Liabilities"):

(i) all Liabilities to the extent relating to any breach of or default under any Transferred Contract by Seller prior to the effective time on the Closing Date;

(ii) all Liabilities for Excluded Taxes;

(iii) any Liabilities to the extent exclusively related to or arising under any Excluded Asset;

(iv) any Liabilities to the extent related to any Inventory that does not constitute Transferred Inventory (which, for clarity, shall include any costs associated with the storage, handling or destruction of any such Inventory);

(v) any obligations of Seller under this Agreement and the Transaction Agreements;

(vi) all other Liabilities of Seller to the extent relating to the conduct of the Business or ownership, lease or operation of the Transferred Assets, in each case to the extent arising prior to the effective time on the Closing Date, except as otherwise set forth in the Assumed Liabilities; and

(vii) any other Liability of Seller to the extent indicated as such in the Transition Services Agreement (including in the event such Liability falls within one or more of the categories of Assumed Liabilities set forth in Section 2.3(a)).

Section 2.4. Assignment of Certain Transferred Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, but without limiting Section 9.1(c), this Agreement shall not constitute an agreement for Seller to sell, convey, assign, transfer or deliver to Buyer any Transferred Asset or any claim or right or any benefit arising thereunder or resulting therefrom or for Buyer to purchase, acquire, or receive any Transferred Asset or to enter into or fulfil its obligations under the Transaction Agreements if an attempted sale, conveyance, assignment, transfer or delivery thereof, or an agreement to do any of the foregoing, without the consent, authorization or approval of a Third Party (including any Governmental Authority), would constitute a breach or other contravention thereof or a violation of Law. Subject to Section 7.6, Seller shall use its Commercially Reasonable Efforts to obtain any such consent, authorization or approval as promptly as practicable after the date hereof and, Buyer shall, and shall cause each of its applicable Affiliates to, use its Commercially Reasonable Efforts to cooperate with Seller to obtain any such consent, authorization or approval necessary for the sale, conveyance, assignment, transfer or delivery of any such Transferred Asset, claim, right or benefit to Buyer and its Affiliates. For clarity, any Contract that would otherwise constitute a Transferred Contract, or other asset that would otherwise constitute a Transferred Asset, that is not assignable or transferable as contemplated in this Section 2.4(a) (each, a "Non-Transferable Asset") shall not be deemed a Transferred Asset; provided however, following Seller's receipt of the relevant consent, authorization or approval, as applicable, Seller shall promptly assign or transfer to Buyer the Non-Transferable Asset, and such asset shall thereafter be deemed a "Transferred Asset" for purposes of this Agreement.

(b) If, on the Closing Date, any such consent, authorization or approval is not obtained, or if an attempted sale, conveyance, assignment, transfer or delivery thereof would constitute a breach or other contravention or a violation of Law, subject to Section 7.6, Seller will, on and after the Closing, use Commercially Reasonable Efforts to transfer such Non-Transferable Asset to Buyer. Prior to having the ability to convey a Non-Transferable Asset as provided in this Section 2.4(b), Seller and Buyer will cooperate and use Commercially Reasonable Efforts to obtain a mutually acceptable arrangement under which Buyer (and/or its Affiliates) would, in compliance with Law and the terms of the applicable Non-Transferable Asset, obtain the benefits of, and assume the obligations and bear the economic burdens associated with, such Transferred Asset, claim, right or benefit in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Buyer (and/or its

Affiliates), or under which Seller would (i) enforce for the benefit of Buyer (and/or its Affiliates) any and all of its or their rights against a Third Party (including any Governmental Authority) associated with such Transferred Asset, claim, right or benefit (collectively, "Third Party Rights"), and (ii) promptly pay to Buyer (and/or its Affiliates), when received, all monies received by it or them under any such Transferred Asset, claim, right or benefit, and Buyer (and/or its Affiliates) would assume the obligations and bear the economic burdens associated therewith. If, notwithstanding Seller's efforts any consent, authorization or approval is not obtained, Seller shall use Commercially Reasonable Efforts to assist Buyer with entering into its own arrangements with respect to any Non-Transferable Asset(s) by providing contact information for individuals employed by the applicable counterparty with whom Seller has a relationship and facilitating discussions between Representatives of Buyer and such individuals. Buyer shall use Commercially Reasonable Efforts to provide to Seller whatever is reasonably required for Seller to meet its or its Affiliates' obligations on a timely basis in relation to any such Transferred Asset, claim, right or benefit.

(c) The obligations of Seller under Section 2.4(a) and Section 2.4(b) shall terminate upon the earliest of (i) receipt of the requisite consent, authorization or approval (in which event the applicable Transferred Asset shall be sold, conveyed, assigned, transferred or delivered to Buyer (and/or its Affiliates)), (ii) such time as Buyer enters into its own arrangement with respect to a Non-Transferable Asset and (iii) June 30, 2021.

ARTICLE III

PURCHASE PRICE

Section 3.1. Purchase Price. The consideration for the Transferred Assets shall be (i) an aggregate cash amount equal to the sum of (A) Twelve Million Five Hundred Thousand Dollars ($12,500,000) (the "Closing Payment), *plus* (B) the Milestone Payments, *plus* (C) the Sales-Based Payments, *plus* (D) the Initial Sales-Based Payments, *plus* (E) the [***] (such sum, the "Purchase Price") and (ii) Buyer's assumption of the Assumed Liabilities.

Section 3.2. Milestone Payments and Sales-Based Payments.

(a) Buyer shall pay or cause to be paid to Seller each of the payments set forth below (each a "Milestone Payment" and together, the "Milestone Payments") following the first achievement of the corresponding event (each a "Milestone") set forth in Table 3.2(a)(i) and Table 3.2(a)(ii) below. Each Milestone Payment set forth in this Section 3.2 is payable only once (*i.e.*, the first time the Milestone event is achieved) irrespective of the number of Milestone Products and the times such event is achieved and is non-refundable once paid. Within twenty (20) Business Days after achievement of a Milestone in respect of which a payment is required to be made under this Agreement (the "Milestone Payment Date"), Buyer shall (i) notify Seller in writing of such achievement (the "Milestone Notice") and (ii) pay the corresponding Milestone Payment that is due and payable to Seller. The

Milestone Notice shall include (A) with respect to the Milestones in Table 3.2(a)(i), Buyer's good faith determination of the amount of Net Sales for the applicable measurement period and the corresponding Milestone Payment, with reasonable details and supporting materials in respect of such calculations set forth in the Milestone Notice, and (B) with respect to the Milestones in Table 3.2(a)(ii), whether or not there exists a Loss of Exclusivity as of the relevant date(s) set forth in such table. In the event that Buyer fails to pay a Milestone Payment on the Milestone Payment Date, such payment shall accrue interest for the period commencing on the Milestone Payment Date at an annual rate equal to the lesser of: (x) [***] or (y) [***], in each case calculated on the number of days such payment is delinquent, compounded monthly (the "Interest Rate"). In addition, if Buyer fails to pay the Milestone Payment when due, Buyer shall pay to Seller all of Seller's costs and expenses (including attorneys' fees) in connection with efforts to collect such Milestone Payment.

Table 3.2(a)(i)		
	Amount of annual Net Sales of all Milestone Products in a given Calendar Year in the Territory:	**Milestone Payment (in Dollars):**
1.	$[***]– $[***]	$[***]
2.	$[***]– $[***]	$[***]
3.	$[***]– $[***]	$[***]
4.	$[***]– $[***]	$[***]

For purposes of determining whether a Milestone set forth in Table 3.2(a)(i) has been achieved, Net Sales of the Product, the Development Product and any other Milestone Product in a given Calendar Year in the Territory shall be aggregated. The Milestones set forth in Table 3.2(a)(i) are intended to be sequential, such that satisfaction of any numbered Milestone other than 1. shall be deemed to have satisfied all lower numbered Milestones (to the extent not previously satisfied), and Buyer shall be obligated to make Milestone Payments for any such lower numbered Milestone that were not previously paid concurrently with the Milestone Payment for such higher numbered Milestone. Without prejudice to the generality of the foregoing, satisfaction of a Milestone at any Net Sales threshold would be deemed to satisfy all Milestones at any lower Net Sales threshold(s) (to the extent not previously satisfied). For the sake of clarity, the aggregate maximum amount payable in Milestone Payments to Seller under this Agreement pursuant to Table 3.2(a)(i) is [***]Dollars ($[***]).

Table 3.2(a)(ii)	
No Loss of Exclusivity as of the Following Date with respect to the Milestone Products being sold in the U.S. as of such date:	**Milestone Payment (in Dollars):**
[***]	$[***]

[***]	$[***]
[***]	$[***]

The Milestones set forth in Table 3.2(a)(ii) shall be deemed achieved if, as of the relevant dates set forth in table above, at least one (1) Milestone Product is being sold by or on behalf of Buyer in the U.S. and there is no Loss of Exclusivity for all Milestone Products being sold by or on behalf of Buyer in the U.S. as of such dates. For clarity, as of the date of the first Loss of Exclusivity for a Milestone Product in the U.S., there shall be no further Milestone Payments due in connection with the Milestones listed in Table 3.2(a)(ii) for any Milestone Product. For the sake of clarity, the aggregate maximum amount payable in Milestone Payments to Seller under this Agreement pursuant to Table 3.2(a)(ii) is [***]Dollars ($[***]).

(b) Sales-Based Payments are payable as follows:

(i) Subject to Section 3.2(b)(iv)-(v), from and after (A) the first day after the Closing Date until the date that is the last day of the month that includes the date that is the first anniversary of the Closing Date (the "First Initial Sales-Based Payment Term"), Buyer shall pay to Seller an amount equal to [***]percent ([***]%) of Net Sales of the Milestone Products in the Territory for such twelve-month (12) period, and (B) the first day after the last day of the First Initial Sales-Based Payment Term until the first anniversary of the last day of the First Initial Sales-Based Payment Term (such period, together with the First Initial Sales-Based Payment Term, the "Initial Sales-Based Payment Term"), Buyer shall pay to Seller an amount equal to [***]percent ([***]%) of Net Sales of the Milestone Products in the Territory for such twelve-month (12) period. Each payment described in clauses (A) and (B) of this Section 3.2(b)(i) shall be deemed an "Initial Sales-Based Payment".

(ii) Subject to Section 3.2(b)(iv)-(v), for each twelve (12) month period (or with respect to the last period, such shorter period) commencing with the first day after the date that is the end of the Initial Sales-Based Payment Term until the date that is the later of (x) the last day of the month that includes the date that is eight (8) years from the Closing Date and (y) the date that is the last day of the month that includes the first date on which all Milestone Products have suffered a Loss of Exclusivity in each country in which all Milestone Products are marketed or sold ("Sales-Based Payment Term"), Buyer shall pay to Seller a sales-based payment (each of (A)-(C) below, a "Sales-Based Payment" and collectively, "Sales Based Payments") set forth in Table 3.2(b)(ii) below, as calculated by multiplying the applicable percentage rate by the corresponding amount of incremental Net Sales of all Milestone Products in the Territory during the first and each successive twelve (12)-month period (or for the last period, such shorter period).

Table 3.2(b)(ii)	
Amount of Net Sales of all Milestone Products in the Territory during the twelve (12) month period to which the Sales-Based Payment relates:	**The percentage rate of such Sales-Based Payment applicable to such Net Sales:**
(A) $[***]-[***]	[***]%

(B) $[***]-[***]	[***]%
(C) Greater than $[***]	[***]%

For the avoidance of doubt, Buyer shall only be required to pay the Initial Sales-Based Payments or the Sales-Based Payments as set forth in this Agreement.

(iii) All Initial Sales-Based Payments and Sales-Based Payments payable to Seller shall be paid by Buyer on a quarterly basis within thirty (30) days after the end of each Calendar Quarter in which the applicable Net Sales were recorded (each a "Sales-Based Payment Date"). In the event that Buyer fails to pay an Initial Sales-Based Payments or Sales-Based Payment on the applicable Sales-Based Payment Date, such payment shall accrue interest for the period commencing on the Sales-Based Payment Date at a rate equal to the Interest Rate.

(iv) Loss of Exclusivity.

(1) In the event of a Loss of Exclusivity with respect to a particular Milestone Product (each, an "LOE Milestone Product") in a particular country in which such LOE Milestone Product is marketed or sold (such country, an "LOE Country"), any Initial Sales-Based Payment and/or Sales-Based Payment allocable to such LOE Milestone Product (and only such LOE Milestone Product) sold in such LOE Country (and only such LOE Country) shall be reduced by Fifty Percent (50%) of the amounts otherwise payable under Section 3.2(b)(i) and Section 3.2(b)(ii), effective as of the first date of the month following the date of such Loss of Exclusivity for such LOE Milestone Product in such LOE Country. For the avoidance of doubt, with respect to any instance of Loss of Exclusivity for a particular LOE Milestone Product in a particular LOE Country, there shall be no reduction in any Initial Sales-Based Payments and/or Sales-Based Payments for any other Milestone Products in such LOE Country nor shall there be any reduction in any Initial Sales-Based Payments and/or Sales-Based Payments for such LOE Milestone Product in any country other than the applicable LOE Country.

(2) Notwithstanding anything to the contrary set forth in Section 3.2(b)(ii), for purposes of Section 3.2(b)(ii), the Net Sales of any given Milestone Product in any given country from and after the date that is the later of (x) the last day of the month that includes the date that is eight (8) years from the Closing Date and (y) the date that is the last day of the month that includes the first date on which such Milestone Product has suffered a Loss of Exclusivity in such country, shall be deemed to be reduced to zero (0), and for the avoidance of doubt, no further Initial Sales-Based Payments or Sales-Based Payments will be due on the sales of such Milestone Product in such country as of such date.

(v) Third Party Intellectual Property.

(1) If Buyer believes, in its reasonable discretion, that it is necessary for Buyer to obtain a license from a Third Party to a patent or patent

application in connection with the manufacture, use, sale or other exploitation of a Development Product, and Buyer is required to pay to such Third Party a royalty, milestone payments or other monetary compensation in consideration for the grant or maintenance of such license ("Third Party Compensation"), then for the period during which Buyer owes any Initial Sales-Based Payments or Sales-Based Payments to Seller hereunder with respect to such Development Product, the amounts that would otherwise have been payable as Initial Sales-Based Payments or Sales-Based Payments to Seller under this Agreement shall be reduced by fifty percent (50%) of all Third Party Compensation payable by or on behalf of Buyer to such Third Party; provided that, the foregoing royalty reduction shall not act to reduce the Initial Sales-Based Payments or Sales-Based Payments payable by Buyer to less than fifty percent (50%) of the amounts payable by Buyer for a given Calendar Quarter pursuant to Section 3.2(b).

(c) Reporting Obligations.

(i) Buyer shall provide Seller with a quarterly report, within thirty (30) days of the end of each Calendar Quarter beginning with the first full Calendar Quarter after the Closing Date and until the payment of all Milestone Payments and Initial Sales-Based Payments and Sales-Based Payments in full pursuant to this Agreement (each such report, an "Update Report"). Each Update Report shall (A) describe in reasonable detail the Milestone Product Parties' commercial progress towards achievement of the Milestone events resulting in each Milestone Payment (including, for the first Calendar Quarter of each Calendar Year until 2031, whether or not there exists a Loss of Exclusivity with respect to the Product), (B) the total amount of Net Sales during the applicable quarter, (C) the calculation of Initial Sales-Based Payments or Sales-Based Payments due for such quarter, including the exchange rates used, if any, (D) if any Loss of Exclusivity has occurred with respect to any Milestone Product in that Calendar Quarter, documents providing the basis for such claim of Loss of Exclusivity, and (E) for each Update Report delivered with respect to the fourth quarter of any applicable Calendar Year, such Update Report shall also include an annual report, setting forth in reasonable detail the calculation of the annual Net Sales for such applicable Calendar Year and an annual forecast for the following Calendar Year that details the Net Sales estimates per quarter, including gross to net sales calculations and assumptions, together with reasonable information and documentation supporting Buyer's calculations therefor (but excluding, for clarity, any related budget). In addition, from time to time, but no more than once per Calendar Year, upon Seller's reasonable request, Buyer shall provide Seller with a reasonable update setting forth a high-level overview of Buyer's development activities, if any, with respect to the Product and/or the Development Product and/or any other Milestone Product, as applicable, including related regulatory activities.

(ii) If after delivery of an Update Report, Seller requests in writing a meeting with representatives of Buyer to discuss such Update Report, Buyer shall make available in person or by phone for such a meeting appropriate representative(s) involved (including employees of Buyer or its Affiliates who are responsible for managing the business related to the Milestone Products and knowledgeable about its operations) with representatives of Seller. Unless otherwise agreed by Seller, any such meeting shall occur with fifteen (15) days of the applicable request by Seller.

(iii) Buyer shall permit Seller, by an independent qualified public accounting firm of international reputation engaged by Seller and reasonably acceptable to Buyer (such accounting firm, the "Auditors"), to examine the books and records relating to the Milestone Products at any reasonable time at Buyer's principal place of business to assess the accuracy of the reports, accountings and payments made by Buyer hereunder. Such Auditors may be required by Buyer to enter into a reasonably acceptable confidentiality agreement. The opinion of the Auditors regarding such reports, accountings and payments shall be furnished to Buyer and Seller and shall be Confidential Information of Buyer and binding on the Parties other than in the case of clear error. If it is determined by the Auditors that additional Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments are owed by Buyer to Seller in respect of any period, Buyer will pay Seller the additional payments, including interest calculated at the Interest Rate in accordance with Section 3.2(a), owed to Seller within thirty (30) days of the date the written report of the Auditors is received by Buyer. If it is determined by the Auditors that Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments were overpaid during any period, Buyer will credit such overpayments to future Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments, as applicable, owed to Seller. The fees charged by the Auditors in connection with this Section 3.2(c) will be paid by Seller, unless any additional Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments owed by Buyer to Seller exceed $50,000 of the amounts paid for the period subject to such audit, in which case Buyer will pay the fees charged by the Auditors. No period, once audited, may be re-audited by or on behalf of Seller.

(d) Buyer Obligations. Buyer shall, and shall cause its Affiliates and the other Milestone Product Parties, to use Commercially Reasonable Efforts to (A) achieve each Milestone set forth in Table 3.2(a)(i) with respect to the Product in a prompt and expeditious manner, (B) use Commercially Reasonable Efforts to commercialize the Product in countries where Buyer has obtained Regulatory Approval for such Product, and (C) evaluate the Development Product, in its sole discretion, in accordance with Section 3.2(e). Without limiting the generality of the foregoing, Buyer shall not, and shall not authorize or permit its Affiliates or other Milestone Product Parties to, take any action, or omit to take any action, with the intent of avoiding, delaying or reducing the payment of any Milestone Payment(s), Sales-Based Payments or Initial Sales-Based Payments. In the event that a Milestone Product Party determines that a Milestone will not be achieved, Buyer shall promptly notify Seller in writing of such determination (a "Milestone Abandonment Notice") and shall provide Seller with access to any information, data, books, records, work papers or personnel that could be reasonably expected to assist in evaluating such determination. The Milestone Abandonment Notice shall specify in reasonable detail the reasons the applicable determination was made.

(e) Buyer will at a time that Buyer deems suitable, in its sole discretion, after the Closing use Commercially Reasonable Efforts to evaluate further development of the Development Product. If Buyer determines, in its sole discretion, through such analysis, that further development of the Development Product is warranted, Buyer will employ Commercially Reasonable Efforts with respect to the development of such Development Product; provided, however, that if at any time

Buyer reasonably determines, in its sole discretion, that continued development of the Development Product is no longer warranted, Buyer may discontinue such development. Notwithstanding any other provision of this Agreement, any such discontinuance or determination not to develop the Development Product will not result in a breach by Buyer of any obligation, warranty, representation, or covenant under this Agreement, provided that Buyer used Commercially Reasonable Efforts in its initial evaluation of the development potential of the Development Product, and Buyer has and will have no obligations under this Agreement with respect to the Development Product other than those specifically described herein.

(f) Transition Services. The Parties shall enter into that certain Transition Services Agreement, substantially in the form attached hereto as Exhibit G (the "Transition Services Agreement").

(g) Acceleration of Milestone Payments. Notwithstanding anything to the contrary herein, in the event that any of the following events occur, the maximum amount of each Milestone Payment and/or [***] that have not yet been satisfied or deemed to have been satisfied shall be immediately due and payable: (i) Buyer commences any Proceeding in bankruptcy or for dissolution, liquidation, or winding-up; (ii) any such Proceeding is commenced against Buyer or a receiver or trustee is appointed for Buyer or a substantial part of its respective property, and such Proceeding or appointment is not dismissed or discharged within thirty (30) days after its commencement; or (iii) Buyer (x) makes an assignment for the benefit of creditors, or (y) petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for all or substantially all of its assets or (z) has a receiver, custodian or trustee appointed for all or substantially all of its assets and such receiver, custodian or trustee is not discharged within thirty (30) days thereafter.

(h) For clarity, the achievement of a Milestone, Initial Sales-Based Payment and/or Sales-Based Payment by or under authority of any Milestone Product Party shall be deemed the achievement of such Milestone, Initial Sales-Based Payment and/or Sales-Based Payment by Buyer, and Buyer (not the Milestone Product Party) shall be obligated to pay or cause to be paid the corresponding Milestone Payment, Initial Sales-Based Payment and/or Sales-Based Payment as set forth in this Section 3.2.

(i) For purposes of this Section 3.2 and where otherwise used in this Agreement:

(i) "Net Sales" means the gross amounts invoiced for sales of Milestone Products by any Milestone Product Party to any unrelated third parties less the following deductions: (a) normal and customary trade, quantity and cash discounts allowed; (b) discounts, refunds, rebates, chargebacks, retroactive price adjustments, and any other allowances which effectively reduce the net selling price; (c) sales, excise taxes, duties, and other government charges on the sales of Milestone Products; (d) freight, postage, shipping, insurance, and other transportation costs but only up to an amount equal to [***] percent ([***]%) of the gross amounts invoiced for sales for the applicable period, in the aggregate;

(e) Milestone Product returns and allowances and related allowances or credits, billing corrections, and bad debt; and (f) any other customary adjustments in accordance with U.S. GAAP.

(ii) Combination Products.

(1) In the event that any Milestone Product is sold as part of a Combination Product, the Net Sales of the Milestone Product, for the purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be determined by multiplying the Net Sales of the Combination Product by the fraction, A / (A+B) where A is the weighted average sale price of the applicable Milestone Product when sold separately in finished form, and B is the weighted average sale price of the other product(s) sold separately in finished form. "Combination Product" means any pharmaceutical product which comprises any Milestone Product and other active compound(s) and/or ingredients).

(2) In the event that the weighted average sale price of the applicable Milestone Product can be determined but the weighted average sale price of the other product(s) cannot be determined, Net Sales for purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be calculated by multiplying the Net Sales of the Combination Product by the fraction A / C where A is the weighted average sale price of the applicable Milestone Product when sold separately in finished form and C is the weighted average sale price of the Combination Product.

(3) In the event that the weighted average sale price of the other product(s) can be determined but the weighted average sale price of the applicable Milestone Product cannot be determined, Net Sales for purposes of determining Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, shall be calculated by multiplying the Net Sales of the Combination Product by the following formula: one (1) minus (B / C) where B is the weighted average sale price of the other product(s) when sold separately in finished form and C is the weighted average sale price of the Combination Product.

(4) In the event that the weighted average sale price of both the applicable Milestone Product and the other product(s) in the Combination Product cannot be determined, the parties will negotiate in good faith the appropriate allocation percentage of Net Sales of the Combination Product to the applicable Milestone Product.

(5) The weighted average sale price for a Milestone Product, other product(s), or Combination Product shall be calculated once each Calendar Year and such price shall be used during all applicable royalty reporting periods for the entire following Calendar Year. When determining the weighted average sale price of a Milestone Product, other product(s), or Combination Product, the

weighted average sale price shall be calculated by dividing the sales dollars (translated into U.S. dollars) by the units of active ingredient sold during the twelve (12) months (or the number of months sold in a partial calendar year) of the preceding Calendar Year for the respective Milestone Product, other product(s), or Combination Product. In the initial Calendar Year, a forecasted weighted average sale price will be used for the Milestone Product, other product(s), or Combination Product. Any over or under payment due to a difference between forecasted and actual weighted average sale prices will be paid or credited in the first Milestone Payments, Initial Sales-Based Payments and Sales-Based Payments, as the case may be, of the following Calendar Year or Calendar Quarter, as applicable.

(iii) Such amounts shall be determined from the books and records of the Milestone Product Parties maintained in accordance with U.S. GAAP consistently applied. Buyer further agrees in determining such amounts, it will use Buyer's then current standard procedures and methodology, including Buyer's then current standard exchange rate methodology for the translation of foreign currency sales into U.S. Dollars.

(iv) Sales or commercial dispositions of Milestone Products between or among Milestone Product Parties and their Affiliates shall be excluded from the computation of Net Sales (except where such Milestone Product Parties or Affiliates are end users of the Product), but Net Sales shall include the subsequent final sales to third parties by such Milestone Product Parties or their Affiliates. Notwithstanding the foregoing, if a Milestone Product is sold or otherwise commercially disposed of for consideration other than cash or in a transaction that is not at arm's length between buyer and seller, then the gross amount to be included in the calculation of Net Sales shall be the amount that would have been invoiced had the transaction been conducted at arm's length and for cash. Such amount that would have been invoiced shall be determined, wherever possible, by reference to the average selling price of such Milestone Product in arm's length transactions in the relevant country.

Section 3.3. Intended Tax Treatment. The Parties will treat the Milestone Payments, Initial Sales-Based Payments, Sales-Based Payments and the [***] as an adjustment to the Purchase Price and such payments will be recognized by Seller (as proceeds of the sale of the Transferred Assets) and Buyer (as an adjustment to the tax basis of the Transferred Assets) at such time and in such amounts as finally determined hereunder, in each case, for U.S. federal, state, and local income and foreign tax purposes.

Section 3.4. Allocation of Purchase Price. The Purchase Price will be allocated among the relevant classes of Transferred Assets in accordance with Exhibit J (the "Allocation Statement"). From time to time, Seller shall send to Buyer an updated Allocation Statement to reflect any adjustments to the Purchase Price (including as a result of any Initial Sales-Based Payments and Sales-Based Payments, [***] or Milestone Payments made by Buyer pursuant to this Agreement). The Parties (a) shall allocate the Purchase Price in accordance with the Allocation Statement, (b) shall, unless otherwise required a final "determination" as defined under Section 1313(a) of the Code, prepare and file, or cause to be prepared and filed, all Tax Returns (including IRS Form 8594 and any amendments thereto) and reports in a manner consistent with the Allocation Statement and (c) shall not take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with such allocation. If the values set forth on the

Allocation Statement are disputed by any tax authority, the Party hereto receiving notice of such dispute shall make reasonable efforts to notify the other Party hereto concerning the existence of such dispute and the Parties shall, where and when practicable, consult with each other with respect to all issues related to the Allocation Statement in connection with such dispute. Any adjustments to the consideration payable pursuant to this Agreement shall be allocated in a manner consistent with the Allocation Statement.

Section 3.5. Withholding Taxes.

(a) Except as otherwise provided in Section 3.5(b), Buyer shall be entitled to deduct and withhold from any consideration payable pursuant to this Agreement such amounts as are required to be deducted or withheld therefrom under any applicable Law. To the extent such amounts are so deducted or withheld and paid over to the applicable Governmental Authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. Buyer shall use commercially reasonable efforts to provide Seller a notice of its intention to make such deduction or withholding five (5) Business Days prior to making such deduction or withholding on amounts paid on the Closing.

(b) In the event that Buyer assigns its rights under this Agreement and, solely by reason of such assignment, Buyer is required to deduct or withhold in respect of payments made hereunder to Seller under applicable Law, then Section 3.5(a) shall not apply and all payments to Seller shall be made in full, without any set-off, counterclaim, deduction or withholding, regardless of any requirement under applicable Law or otherwise.

Section 3.6. [***]. All capitalized terms used or referenced in this Section 3.6 shall have the meaning set forth in the [***], other than the terms [***] and [***].

(a) [***].

(b) [***].

ARTICLE IV

THE CLOSING

Section 4.1. Closing Date. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place remotely via the electronic exchange of documents and signature pages (or such other location as shall be mutually agreed upon by Seller and Buyer) commencing at 10:00 am eastern standard time on a date (the "Closing Date") that is the third (3rd) Business Day following the date on which all of the conditions to the obligations of Seller and Buyer to consummate the transactions contemplated hereby set forth in ARTICLE X (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and

be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 11:59 pm, New York City time, on the Closing Date.

Section 4.2. Closing Deliveries by Seller. At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(a) a counterpart of the Assignment and Assumption Agreement, duly executed by Seller;

(b) a counterpart of the Bill of Sale, duly executed by Seller;

(c) a counterpart of the IP Assignment Agreement, duly executed by Seller;

(d) a counterpart of the Transition Services Agreement, duly executed by Seller;

(e) a letter to the FDA, substantially in the form attached hereto as Exhibit I-1 (the "Seller FDA Letter"), executed by Seller, informing the FDA of the transfer of the Product NDA to Buyer;

(f) a list of the Contracts that constitute Non-Transferable Assets as of the Closing Date; and

(g) a duly executed IRS Form W-9 by Seller.

Section 4.3. Closing Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller:

(a) the Closing Payment by wire transfer of immediately available funds into an account (or accounts) designated in advance by Seller;

(b) a counterpart of the Assignment and Assumption Agreement, duly executed by Buyer;

(c) a counterpart of the Bill of Sale, duly executed by Buyer;

(d) a counterpart of the IP Assignment Agreement, duly executed by Buyer;

(e) a counterpart of the Transition Services Agreement, duly executed by Seller; and

(f) a letter to the FDA, substantially in the form attached hereto as Exhibit I-2 (the "Buyer FDA Letter"), executed by Buyer, accepting the transfer of the Product NDA to Buyer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer that, except as set forth in the Seller Schedules:

Section 5.1. Seller Organization; Good Standing.

(a) Seller is duly incorporated, validly existing and, to the extent legally applicable, in good standing under the laws of Delaware and has the requisite power and authority to operate its business as now conducted.

(b) Seller is duly qualified to conduct business as a foreign corporation and, to the extent legally applicable, is in good standing in each jurisdiction where the nature of the business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not, individually or in the aggregate, reasonably be expected to materially delay the ability of Seller to consummate the transactions contemplated hereby or have a Material Adverse Effect.

Section 5.2. Authority; Enforceability. Seller has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Agreements by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Seller, and upon execution and delivery thereof, the other Transaction Agreements will have been duly executed and delivered by Seller, and assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes, and upon the due authorization, execution and delivery thereof by Buyer, the other Transaction Agreements will constitute the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with the terms hereof, subject to the effect of any applicable Laws relating to bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar applicable Laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity, regardless of whether considered in a Proceeding in equity or at law (the "Enforceability Exceptions").

Section 5.3. No Conflicts. The execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not, and will not (i) conflict with or violate any Law or Governmental Order applicable to Seller or the Business, (ii) conflict with or violate, in any material respect, any provision of the articles of incorporation or by-laws (or similar organizational document) of Seller, (iii) result in any breach of, or constitute a default under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any of the Transferred Assets pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Seller (with respect to the Transferred Assets) is a party or by which any Transferred Asset is bound, except, with respect to the foregoing clauses (i) and (iii), for (x)

such violations or conflicts which would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole, or (y) any consents, approvals, authorizations and other actions described in Section 5.4.

Section 5.4. Consents and Approvals. The execution, delivery and performance by Seller of the Transaction Agreements and the consummation by Seller of the transactions contemplated hereby and thereby do not and will not require any material consent, approval, authorization or other action by, or any material filing with or notification to, any Governmental Authority by Seller, except (a) as contemplated by Section 4.2 and Section 8.2, (b) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, require any approval, authorization, consent, license, exemption, filing or registration with any Governmental Authority or, (c) where the failure to obtain such consent, approval, authorization, or action or to make such filing or notification would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or would not prevent or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.5. Title to Transferred Assets. Seller has good and valid title to all of the tangible Transferred Assets, free and clear of all Encumbrances, other than Permitted Encumbrances.

Section 5.6. Litigation. As of the date hereof, there is no Proceeding pending or, to the Knowledge of Seller, threatened in writing, against Seller (with respect to the Business, the Product or the Development Product) that would reasonably be expected to result in (i) damages exceeding $50,000, based on a reasonable analysis of counsel or (ii) any injunctive, declaratory, or other equitable relief or remedy affecting the ownership right of or in any Transferred Asset or that involves an investigation or suit by any Governmental Authority relating to the Product, the Business or the Development Product.

Section 5.7. Compliance with Laws. Seller (with respect to the Business) is not in violation of any Laws or Governmental Orders applicable to the conduct of the Business, the Development Product, or the Product, except for such violations the existence of which would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.8. Regulatory Approvals.

(a) Except as set forth in Section 5.8(a) of the Seller Schedule, Seller is the registered or beneficial holder of each of the material Regulatory Approvals, including all of the Transferred Regulatory Documentation. All Regulatory Approvals held by Seller are in full force and effect, except, in each case, where the failure to so be in full force and effect would not reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole.

(b) Seller has not received, as of the date hereof, any written or, to the Knowledge of Seller, oral notice that any Governmental Authority with jurisdiction over the Business has commenced or will commence any action to (i) withdraw any Regulatory Approval of any Milestone Product or (ii) enjoin production, marketing or sale of the Product except, in each case, where such action would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Product and the Development Product, taken as a whole.

(c) To the Knowledge of Seller, the Product is being distributed, manufactured, sold and marketed in compliance in all material respects with all requirements under applicable Law. As of the date hereof, Seller has not received any unresolved written or, to the Knowledge of Seller, oral notice from any Governmental Authority that with respect to the Product, Seller is not in material compliance with any requirement under applicable Law.

(d) The Seller has not made an untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority or failed to disclose a material fact expressly required to be disclosed to the FDA or any other Governmental Authority, that, at the time of the relevant disclosure or failure to disclose, as applicable, would reasonably be excepted to provide a basis for the FDA or any other Governmental Authority to invoke the FDA Application Integrity Policy respecting "Fraud, Untrue Statements of Material Facts, Bribery and Illegal Gratuities," set forth in FDA's Compliance Policy Guide Sec. 120.100 (CPG 7150.09) or any similar policy, in each case, as related to the Product.

(e) Neither Seller, nor to the Knowledge of Seller, any officers, employees, clinical investigator or distributor of Seller has been suspended or debarred or convicted of any crime or engaged in any conduct that would reasonably be expected to result in (i) debarment under 21 U.S.C. Section 335a or any similar applicable Law, (ii) exclusion under 42 U.S.C. Section 1320a-7 or any similar applicable Law or (iii) other action arising from the exploitation of the Product or the Development Product, and, to the Knowledge of Seller, no such action is proposed or pending as of the date hereof.

(f) All application and renewal fees due and payable with respect to all material Regulatory Approvals have been paid, except where the failure to make such payment would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.9. Brokers. Except for Evercore Group L.L.C. ("Evercore"), no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made between Seller and Evercore and any such arrangements, including compensation, shall be the sole responsibility of Seller.

Section 5.10. Permits. Seller holds or has the right to use all Permits. Seller is not in default under, or violating, any of the Permits, except for such defaults or violations as would not reasonably be expected to have a Material Adverse Effect or materially delay the ability of Seller to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 5.11. Transferred Contracts. As of the date hereof (i) each Transferred Contract is a legal, valid and binding obligation of Seller, and, to the Knowledge of Seller, each other party to such material Transferred Contract, and is enforceable against Seller, and, to the Knowledge of Seller, each such other party thereto in accordance with its terms subject, in each case, to the Enforceability Exceptions and (ii) there does not exist any material breach or material default on the part of Seller, under the terms of any Transferred Contract, and to the Knowledge of Seller, no other party to any Transferred Contract is in material breach or default thereunder.

Section 5.12. Taxes.

(a) Seller has timely filed or caused to be timely filed all material Tax Returns exclusively relating to the Business or the Transferred Assets that are required to be filed, and has timely paid or caused to be timely paid all material amounts of Taxes shown as due on such Tax Returns.

(b) No deficiency has been assessed by a Governmental Authority in writing against Seller with respect to a material amount of Taxes exclusively relating to the Business.

(c) There are no Encumbrances for Taxes upon any of the Transferred Assets, other than Encumbrances for Taxes that are Permitted Encumbrances.

(d) No Transferred Contract is a Tax allocation, Tax sharing, Tax indemnification or similar Contract that would, in any manner, bind, obligate or restrict Buyer or its Affiliates (or the Business or the Transferred Assets), other than a Transferred Contract entered into in the ordinary course of business the primary purpose of which is not Tax.

Section 5.13. Intellectual Property.

(a) Section 5.13(a) of the Seller Schedules sets forth a list of all Seller Intellectual Property and material Licensed Intellectual Property that is registered or for which an application for registration has been filed, in each case under the authority of any Governmental Authority (collectively, the "Registered Intellectual Property"), including (i) the jurisdiction in which such item of Registered Intellectual Property has been registered or filed and the applicable registration or serial number; (ii) the current owner thereof; and (iii) the applicable application, registration or serial number and the expiration date thereof.

(b) To the Knowledge of Seller, the Intellectual Property includes all intellectual property that exclusively relates to, and all material intellectual property

that is necessary to, the operation of the Business as conducted on the date of this Agreement, and includes all patent applications and patents including claims that exclusively Cover the Product or the Development Product; provided, that this Section 5.13(b) shall not be deemed to be breached (i) as a result of any action for which Buyer has provided its consent in writing (including pursuant to Section 7.1), or (ii) in the event that Seller does not take action as a result of Buyer not providing consent following the written request of Seller therefor pursuant to Section 7.1.

(c) Seller solely and exclusively owns all right, title and interest in the Seller Intellectual Property, and Seller Controls all other Intellectual Property, in each case, free and clear of Encumbrances other than Permitted Encumbrances. As of the date hereof, to the Knowledge of Seller, the Seller Intellectual Property and material Licensed Intellectual Property, is valid and enforceable. Except as set forth in Section 5.13(c) of the Seller Schedules, neither Seller nor any of its Affiliates has abandoned, canceled or forfeited any Intellectual Property (including by failing to pay any filing or renewals fees), and Seller has not taken any actions that would render a Patent invalid or unenforceable.

(d) Seller has the full and legal right and authority to grant Buyer a license under the Seller Licensed Intellectual Property.

(e) To the Knowledge of Seller, Seller has accurately and completely disclosed to the US Patent and Trademark Office all references or other evidence that Seller is obligated to disclose to comply with the duty of candor.

(f) Other than in the PIV Challenge, no Third Party, except a patent examiner or patent authority in the ordinary course of patent prosecution, has notified Seller in writing, or to the Knowledge of Seller, otherwise alleged, that any claim of a Patent is invalid, unpatentable, or unenforceable. Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party challenging the validity, enforceability or ownership of any of the Intellectual Property.

(g) As of the date hereof, there is no, and for the past three (3) years there has been no, material judicial, administrative or arbitral action, suit, hearing, inquiry, investigation or other Proceeding (public or private) before any Governmental Authority alleging that the development, manufacture, sale or commercialization of the Product, or the development of the Development Product, constitutes infringement, misappropriation or other violation of any intellectual property of any Third Party. Except as set forth in Section 5.13(g) of the Seller Schedules, (i) to the Knowledge of Seller, there is no reasonable basis for any such allegation of infringement, misappropriation or violation; (ii) Seller has not received any written notice (or, to the Knowledge of Seller, oral notice) from any Third Party making any such allegation, and (iii) to the Knowledge of Seller, no Third Party is infringing, misappropriating or otherwise violating any of the Intellectual Property and to the Knowledge of Seller, no Third Party has infringed, misappropriated or otherwise violated any of the Intellectual Property in the past three (3) years.

(h) Other than as set forth on Section 5.13(h) of the Seller Schedules, none of Seller or any of its Affiliates has granted any outbound licenses under the Seller Intellectual Property, other than non-exclusive licenses granted to manufacturers, suppliers, distributors or other Persons performing manufacturing, supply, marketing or other services on behalf of Seller or any of its Affiliates, in each case to the extent necessary to perform such services in the Ordinary Course of Business.

(i) Except as set forth on Section 5.13(i) of the Seller Schedules, all Persons named as inventors on any Patents included in the Seller Intellectual Property, or who should have been listed as such in accordance with applicable Law, have executed and delivered to Seller or its Affiliate, as applicable, a Contract providing for the present assignment by such Person to Seller or its Affiliate, as applicable, of all rights in such Patents.

(j) Notwithstanding anything to the contrary, Buyer acknowledges and agrees that the only representations and warranties given in relation to matters relating to the Intellectual Property specifically addressed in this Section 5.13, are those set out in this Section 5.13, and no other representation or warranty is given in relation to such matters.

(k) Seller does not Control any trademarks, trademark applications, service marks, trade names, certification marks, service names, industrial designs, brand marks, trade dress rights, identifying symbols, logos, emblems, signs, insignia or domain names, or any registrations for any of the foregoing, other than those set forth in Exhibit F, that are exclusively related to the Business, the Product or the Development Product as of the Closing Date.

Section 5.14. Development Product. The development of the Product and the Development Product and the production of the Transferred Inventory have been carried out in accordance with all applicable Laws in all material respects, including GLP, GCP and GMP, as applicable. As of the date hereof, Seller has not received any written notice or other communication indicating that there are any material safety issues, including any facts, data, finding, analysis, information, or belief that there is a substantial risk that (a) the Product presents an unacceptable (i) risk of death, (ii) a life-threatening condition, or (iii) a serious safety or health concern to patients, (b) Regulatory Approval for the Product has been terminated or suspended in any country, or (c) a Regulatory Authority with jurisdiction over the Product has directed or requested discontinuance of development, distribution, use, sale, or importation of the Product, and to the Knowledge of Seller, there is no reasonable basis for any findings related to any of the foregoing (a)-(c).

Section 5.15. Conduct in the Ordinary Course of Business. Neither Seller nor any of its Affiliates has, with respect to the Business, made any change in the selling, distribution, advertising, terms of sale or collection practices in the period twelve (12) months before this Agreement that is inconsistent with the Ordinary Course of Business and would be material to the Business, taken as a whole. In the past twelve (12) months, neither Seller nor any of its Affiliates has, with respect to the Business, (i) entered into any business practices, programs or

long-term allowances not previously used in the Ordinary Course of Business that would be material to the Business, taken as a whole, or (ii) engaged in the practice of "channel stuffing" or any program, activity or other action (including any rebate, discount, chargeback or refund policy or practice, any acceleration of a Transferred Contract), in the case of this clause (ii), that would reasonably be expected to result, directly or indirectly, in a trade buy-in that is significantly in excess of normal customer purchasing patterns consistent in all material respects with the past practices of the Business during the previous twelve (12) months.

Section 5.16. No Other Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES, IF APPLICABLE) OR IN THE ANCILLARY AGREEMENTS, NEITHER SELLER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO SELLER OR ITS AFFILIATES, THE BUSINESS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER AND THEREUNDER OR PURSUANT HERETO OR THERETO, AND SELLER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER MADE BY SELLER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES) OR IN THE ANCILLARY AGREEMENTS, SELLER HEREBY DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES). WITHOUT LIMITING THE FOREGOING, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS, VALUE OR PROFITABILITY OF THE TRANSFERRED ASSETS.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

Section 6.1. Buyer's Organization; Good Standing.

(a) Buyer is duly incorporated, validly existing and, to the extent legally applicable, in good standing under the laws of Delaware and has the requisite power and authority to operate its business as now conducted.

(b) Buyer is duly qualified to conduct business as a foreign corporation and is in good standing in every jurisdiction where the nature of the

business conducted by it makes such qualification necessary, except where the failure to so qualify or be in good standing would not prevent or materially delay the consummation of the transactions contemplated hereby.

Section 6.2. Authority; Enforceability. Buyer has the requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the other Transaction Agreements by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized. This Agreement has been duly executed and delivered by Buyer, and upon execution and delivery thereof, the other Transaction Agreements will have been duly executed and delivered by Buyer, and assuming the due authorization, execution and delivery of this Agreement by Seller, this Agreement constitutes, and upon the due authorization, execution and delivery thereof by Seller, the other Transaction Agreements will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with the terms hereof, subject to the Enforceability Exceptions.

Section 6.3. No Conflicts. Provided that all consents, approvals, authorizations and other actions described in Section 6.4 have been obtained or taken, except as may result from any facts or circumstances relating to Seller or its Affiliates, the execution, delivery and performance by Buyer of the Transaction Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby do not, and will not (i) conflict with or violate any Law or Governmental Order applicable to Buyer, (ii) conflict with or violate, in any material respect, any provision of the articles of incorporation or by-laws (or similar organizational document) of Buyer, or (iii) result in any breach of, or constitute a default under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Encumbrance pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other material instrument to which Buyer is a party, except, with respect to the foregoing clauses (i) and (iii) which would not prevent or materially delay the ability of Buyer to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 6.4. Consents and Approvals. The execution, delivery and performance by Buyer of the Transaction Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby do not and will not require any material consent, approval, authorization or other action by, or any material filing with or notification to, any Governmental Authority by Buyer or any of its Affiliates, except (a) in connection, or in compliance, with the notification and waiting period requirements of the HSR Act and applicable filings or approvals under non-U.S. antitrust and competition Laws, require any approval, authorization, consent, license, exemption, filing or registration with any Governmental Authority or, (b) where the failure to obtain such consent, approval, authorization, or action or to make such filing or notification would not reasonably be expected to materially delay the ability of Buyer to consummate the transactions contemplated by, or perform its obligations under, the Transaction Agreements.

Section 6.5. Absence of Restraints; Compliance with Laws.

(a) To the Knowledge of Buyer, there exist no facts or circumstances that would reasonably be expected to prevent or delay the ability of Buyer or its applicable Affiliates to consummate the transactions contemplated by, or to perform their respective obligations under, the Transaction Agreements.

(b) Neither Buyer nor any of its Affiliates that are or will be party to any Transaction Agreements are in violation of any Laws or Governmental Orders applicable to them or by which any of their respective material assets is bound or affected, except for violations the existence of which would not reasonably be expected to materially prevent or delay their ability to consummate the transactions contemplated by, or to materially perform their respective obligations under, the Transaction Agreements.

Section 6.6. Litigation. As of the date hereof, there is no Proceeding pending or, to the Knowledge of Buyer, threatened against Buyer or any of its Affiliates which, if adversely determined, would materially interfere with the ability of Buyer to perform its obligations hereunder.

Section 6.7. No Brokers. Buyer will be solely responsible for any commission, finder's fee or other fees and expenses for services rendered by any broker, finder, financial advisor or investment bank in connection with the transactions contemplated hereby based on arrangements made by Buyer or any of its Affiliates.

Section 6.8. Availability of Funds. Buyer (a) has, and will have at the Closing, sufficient immediately available funds available and the financial ability to pay the Purchase Price and any expenses incurred by, on behalf of, or for the account of Buyer in connection with the transactions contemplated by the Transaction Agreements, and (b) has, and will have at the Closing, the resources and capabilities (financial and otherwise) to perform its obligations hereunder and thereunder. Buyer has not incurred any obligation, commitment, restriction or liability of any kind, and is not contemplating or aware of any obligation, commitment, restriction or Liability of any kind, in each case which would prevent, impair or adversely affect such resources and capabilities

Section 6.9. Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement (including any financings being entered into in connection therewith):

(a) the fair saleable value (determined on a going concern basis) of the assets of Buyer will be greater than the total amount of its Liabilities (including all Liabilities, whether or not reflected in a balance sheet prepared in accordance with U.S. GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed);

(b) Buyer will be able to pay its debts and obligations in the ordinary course of business as they become due except where the failure to make such

payment would not reasonably be expected to have a material adverse effect on Buyer's ability to perform its obligations under this Agreement; and

(c) Buyer will have adequate capital to carry on its businesses and all businesses in which it is about to engage.

Section 6.10. Investigation.

BUYER ACKNOWLEDGES AND AGREES THAT IT (I) HAS MADE ITS OWN INQUIRY AND INVESTIGATION INTO, AND, BASED THEREON, HAS FORMED AN INDEPENDENT JUDGMENT CONCERNING THE BUSINESS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY OTHER ASSETS, RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AND (II) HAS BEEN FURNISHED WITH, OR GIVEN ADEQUATE ACCESS TO, SUCH INFORMATION ABOUT THE BUSINESS AND ALL RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AS IT HAS REQUESTED. EXCEPT FOR THE SPECIFIC REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN ARTICLE V, (A) BUYER ACKNOWLEDGES AND AGREES THAT (Y) SELLER IS NOT MAKING AND HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUSINESS OR THE TRANSFERRED ASSETS, OR SELLER'S OR ITS AFFILIATES' RESPECTIVE BUSINESSES, ASSETS, LIABILITIES, OPERATIONS, PROSPECTS, OR CONDITION (FINANCIAL OR OTHERWISE), INCLUDING WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY ASSETS, THE NATURE OR EXTENT OF ANY LIABILITIES, THE PROSPECTS OF THE BUSINESS, THE EFFECTIVENESS OR THE SUCCESS OF ANY OPERATIONS, OR THE ACCURACY OR COMPLETENESS OF ANY CONFIDENTIAL INFORMATION MEMORANDA, MANAGEMENT PRESENTATION, DOCUMENTS, PROJECTIONS, MATERIAL OR OTHER INFORMATION (FINANCIAL OR OTHERWISE) REGARDING THE BUSINESS, OR THE TRANSFERRED ASSETS, OR SELLER OR ITS AFFILIATES FURNISHED TO BUYER OR ITS REPRESENTATIVES OR MADE AVAILABLE TO BUYER AND ITS REPRESENTATIVES IN ANY "DATA ROOMS," "VIRTUAL DATA ROOMS," MANAGEMENT PRESENTATIONS OR IN ANY OTHER FORM IN EXPECTATION OF, OR IN CONNECTION WITH, THE TRANSACTIONS CONTEMPLATED HEREBY, OR IN RESPECT OF ANY OTHER MATTER WHATSOEVER, AND (Z) NO OFFICER, AGENT, REPRESENTATIVE OR EMPLOYEE OF THE BUSINESS HAS ANY AUTHORITY, EXPRESS OR IMPLIED, TO MAKE ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS NOT SPECIFICALLY SET FORTH IN THIS AGREEMENT AND SUBJECT TO THE LIMITED REMEDIES HEREIN PROVIDED; (B) BUYER SPECIFICALLY DISCLAIMS THAT IT IS RELYING UPON OR HAS RELIED UPON ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES THAT MAY HAVE BEEN MADE BY ANY PERSON, AND ACKNOWLEDGES AND AGREES THAT THE SELLER HAS SPECIFICALLY DISCLAIMED AND DO HEREBY SPECIFICALLY DISCLAIM ANY SUCH OTHER REPRESENTATION OR WARRANTY MADE BY ANY PERSON; AND (C) BUYER IS

ACQUIRING THE TRANSFERRED ASSETS AND THE ASSUMED LIABILITIES IN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, SUBJECT ONLY TO THE SPECIFIC REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE V (AS MODIFIED BY THE SELLER SCHEDULES, AS IT MAY BE SUPPLEMENTED OR AMENDED IN ACCORDANCE WITH THIS AGREEMENT). BUYER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO CONDUCT DUE DILIGENCE AND INVESTIGATION WITH RESPECT TO THE TRANSFERRED ASSETS, THE BUSINESS AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND ANY OTHER ASSETS, RIGHTS OR OBLIGATIONS (INCLUDING THE ASSUMED LIABILITIES) TO BE TRANSFERRED HEREUNDER OR THEREUNDER OR PURSUANT HERETO OR THERETO, AND IN NO EVENT SHALL SELLER OR ANY OF ITS AFFILIATES HAVE ANY LIABILITY TO BUYER WITH RESPECT TO A BREACH OF REPRESENTATION, WARRANTY OR COVENANT UNDER THIS AGREEMENT OR ANY ANCILLARY AGREEMENT TO THE EXTENT THAT BUYER HAD KNOWLEDGE OF SUCH BREACH AS OF THE CLOSING DATE.

Section 6.11. Disclaimer of Other Representations and Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THIS ARTICLE VI AND IN THE ANCILLARY AGREEMENTS, NEITHER BUYER NOR ANY OTHER PERSON MAKES ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO BUYER OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE ANCILLARY AGREEMENTS AND BUYER DISCLAIMS (ON BEHALF OF ITSELF AND ITS AFFILIATES) ANY OTHER REPRESENTATIONS AND WARRANTIES, WHETHER MADE BY BUYER OR ANY OF ITS AFFILIATES OR REPRESENTATIVES.

ARTICLE VII

ADDITIONAL COVENANTS AND AGREEMENTS

Section 7.1. Conduct of Business Prior to the Closing.

(a) Except as required by applicable Law or as otherwise contemplated by or necessary to effectuate the Transaction Agreements and except for matters identified in Section 7.1 of the Seller Schedules, from the date of this Agreement through the Closing (or until earlier termination of this Agreement), unless Buyer otherwise consents in advance (which consent shall not be unreasonably withheld, conditioned or delayed), Seller will (x) conduct the Business in the Ordinary Course of Business, (y) use Commercially Reasonable Efforts to preserve intact, in all material respects, its business organization (to the extent exclusively related to the Business) and (z) with respect solely to the Business, not to do any of the following:

(i) grant any Encumbrance on any Transferred Assets other than in the Ordinary Course of Business;

(ii) sell, transfer, lease, sublease or otherwise dispose of any Transferred Assets (other than Inventory in the Ordinary Course of Business);

(iii) amend any material term of, or waive any material right under, any Transferred Contract;

(iv) enter into any settlement or release with respect to any Proceeding that will be a Transferred Asset or Assumed Liability (including, for clarity, the PIV Challenge);

(v) omit to act so as to prevent stocks of Inventory to fall below those maintained in the Ordinary Course of Business in any material respects (other than any actions or omissions taken at the request of Buyer); or

(vi) enter into any legally binding commitment with respect to any of the foregoing.

(b) Notwithstanding anything to the contrary herein, including the provisions of Section 7.1(a), Seller may take reasonable actions in compliance with applicable Law with respect to any operational emergencies (including any restoration measures in response to any hurricane, strong winds, ice event, fire, tornado, tsunami, flood, earthquake or other natural disaster or severe weather-related event, circumstance or development), equipment failures, outages or an immediate and material threat to the health or safety of natural Persons (including any reasonable good faith action taken to address an event stemming from or arising out of the COVID-19 pandemic, including any action by Seller reasonably necessary to comply with any guidelines, advice or decree of any Governmental Authority in connection with or related to COVID-19 (including COVID-19 Measures) and any action taken by Seller in the operation of the Business in its reasonable discretion in connection with or related to COVID-19 or similar pandemic); provided, that Seller shall provide Buyer with notice of any such action taken that would have any impact with respect to the Transferred Assets or the Transaction Agreements as soon as reasonably practicable thereafter (and in no event later than ten (10) Business Days after such action is taken).

Section 7.2. Access to Information.

(a) From the date of this Agreement until the Transition Period (or until earlier termination of this Agreement), upon reasonable prior notice, and except as determined in good faith by Seller to be appropriate to ensure compliance with any applicable Laws and subject to any applicable privileges (including the attorney-client privilege) and contractual confidentiality obligations, Seller shall (i) afford the Representatives of Buyer reasonable access, during normal business hours, to the books and records that will be Transferred Records and Transferred Regulatory Documentation and (ii) furnish to the Representatives of Buyer such additional financial and operating data and other information related to the Business, in each case to the extent readily available to Seller, and prepared or gathered in the ordinary course of business, as Buyer may from time to time reasonably request for purposes

of preparing to operate the Business following the Transition Period; provided, however, that the provision of such access and such data and information shall not (y) unreasonably interfere with any of the businesses, personnel or operations of Seller, or (z) that the Auditors and accountants of Seller or its Affiliates, as applicable, shall not be obliged to make any work papers available to any Person except in accordance with such Auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such Auditors or accountants. From the date of this Agreement until the Closing, except for the parties listed in Section 7.2 of the Seller Schedules or such other parties for whom Seller provides prior written consent (not to be unreasonably withheld, conditioned or delayed), neither Buyer, its Affiliates nor any of their respective Representatives shall contact any employees of, suppliers to, or customers of, Seller in connection with or with respect to this Agreement, any other Transaction Agreement or the transactions contemplated hereby and thereby, or (other than in the ordinary course of business consistent with past practice) to otherwise discuss the business or operations of any of the Business; provided, further, however, that neither Buyer, its Affiliates nor any of their respective Representatives shall have any contact or discussion with any party (including those parties listed on Section 7.2 of the Seller Schedules or such other party for whom Seller has otherwise provided prior written consent) during the referenced period, without first consulting Seller and its Affiliates, and the applicable Representatives of Seller and its Affiliates shall be copied on all written correspondence and present for all oral communications and meetings; provided, further, that, with respect to the parties listed on Section 7.2 of the Seller Schedules, any contact or discussion shall be limited to the topics set forth on such Schedule.

(b) Notwithstanding anything in this Agreement to the contrary, Seller shall not be required, prior to the Closing, to disclose, or cause or seek to cause the disclosure, to Buyer or its Affiliates or Representatives (or provide access to any properties, books or records of Seller that would reasonably be expected to result in the disclosure to such Persons or others) of (i) any competitively sensitive information or any confidential information relating to Know-How, processes or Patent, Trademark, trade name, service mark or copyright applications or product development, or pricing and marketing plans, nor shall Seller be required to permit or cause or seek to cause others to permit Buyer or its Affiliates or Representatives to have access to or to copy or remove from the properties of Seller any documents, drawings or other materials that might reveal any such confidential information or (ii) any Personal Information of any data subjects for which any necessary notices and/or consents have not been received.

Section 7.3. Confidentiality. The terms of that certain confidential disclosure agreement dated October 29, 2020 (the "Confidentiality Agreement") between Seller and Buyer are incorporated into this Agreement by reference and shall continue in full force and effect (and the confidentiality obligations thereunder shall be binding upon Buyer and its Affiliates and their respective Representatives) until the Closing, at which time the confidentiality obligations under the Confidentiality Agreement shall terminate; provided, however, that Buyer's confidentiality obligations shall terminate only in respect of that portion of the Confidential Information (as

defined in the Confidentiality Agreement) exclusively relating to the Business or otherwise constituting a Transferred Asset, and for all other Confidential Information, the Confidentiality Agreement shall continue in full force and effect in accordance with its terms. If, for any reason, the Closing does not occur, then, irrespective of its terms, the Confidentiality Agreement shall continue in full force and effect for a period of two (2) years following the termination of this Agreement. Upon Closing, all Confidential Information as it relates to the Business, the Product, the Development Product and the Transferred Assets shall solely and exclusively vest with the Buyer and notwithstanding any conflicting provision of the Confidentiality Agreement, except in connection with the performance of Seller's obligations under any of the Transaction Agreements, Seller and its Affiliates and their respective Representatives will be obligated to maintain the confidentiality of any of such Confidential Information and to not use such Confidential Information after the Closing without the express written consent of Buyer, as the receiving Party of such Confidential Information, for a period of two (2) years after the Closing; provided that, with respect to any such Confidential Information that constitutes a trade secret under applicable Law such confidentiality obligations shall continue so long as the Confidential Information maintains its status as a trade secret. Notwithstanding anything to the contrary in the Confidentiality Agreement, the terms of this Agreement shall be deemed the Confidential Information of both Parties, and each Party shall maintain the confidentiality of such information in accordance with the terms of the Confidentiality Agreement and this Section 7.3; provided, that, each Party shall have the right to disclose the terms of this Agreement (a) as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles), the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed or to any Governmental Authority (including federal, state, or foreign taxing authorities) with jurisdiction over such Party upon request by such Governmental Authority or (b) to any bona fide potential or actual investor, acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating or carrying out an actual or potential investment, acquisition or other business relationship, in each case, involving the Product, Development Product, other Milestone Products, the Transferred Assets or the Assumed Liabilities; provided, that in connection with such disclosure, such Party shall inform each disclosee of the confidential nature of such information and require each disclosee to execute a customary non-disclosure agreement pursuant to which such disclosee agrees to treat such information as confidential.

Section 7.4. Insurance. Buyer acknowledges and agrees that, upon Closing, all insurance coverage provided under Seller's insurance policies or otherwise in relation to the Transferred Assets pursuant to policies, risk funding programs or arrangements maintained by Seller or by any Affiliate of Seller (whether such policies are maintained in whole or in part with Third Party insurers or with Seller or its Affiliates and including any captive policies or fronting arrangements, and including any "occurrence" based insurance policies provided in relation to Seller and its Affiliates with respect to any occurrences prior to Closing) shall cease, and no further coverage shall be available in respect of any Transferred Asset or Assumed Liability under any such policies, programs or arrangements; provided, that, if a material Transferred Asset suffers a casualty loss prior to the Closing Date that is covered by insurance maintained by Seller or its Affiliates, Seller shall cause any insurance proceeds actually received in respect of such casualty loss, net of any expenses (including any deductibles retained by Seller) incurred in connection with the receipt of such proceeds, to be applied to restore or replace such Transferred Asset.

Section 7.5. Regulatory and Other Authorizations; Consents.

(a) Buyer shall, and shall cause its Affiliates to, take any and all reasonable steps to (i) promptly obtain all Governmental Approvals that may be, or become, necessary for the execution and delivery of, and performance of its obligations pursuant to, the Transaction Agreements (including the consummation of the transactions contemplated thereby), and to furnish promptly any additional information and documentary material that may be requested by a Governmental Authority (including to promptly make available any information and appropriate personnel in response to any queries made by a Governmental Authority, which may include information regarding this Agreement, Buyer's capabilities as the potential purchaser of the Transferred Assets or other matters), (ii) promptly secure the issuance, reissuance or transfer of all licenses and permits that may be or become necessary to operate the Business following the Closing; (iii) take all such actions as may be requested by any such Governmental Authority to obtain such Governmental Approvals, licenses and permits and (iv) avoid the entry of, or effect the dissolution of, any permanent, preliminary or temporary Governmental Order, that would otherwise have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement. Seller will cooperate with the reasonable requests of Buyer in seeking promptly to obtain all such Governmental Approvals and the issuance, reissuance or transfer of such licenses and permits. Buyer shall, and shall cause its Affiliates to, pay all fees or make other payments required by applicable Law to any Governmental Authority in order to obtain any such Governmental Approvals, licenses and permits, except for any and all past due amounts that were either (i) due and payable prior to or on the Closing Date, or (ii) are a result, whether direct or indirect, of Seller's failure to timely, and fully, pay such fees or other payments as required by Applicable Law that become due and payable prior to or on the Closing Date, including any penalties, fees or interest. Buyer shall not undertake any actions that would reasonably be likely to have the effect of preventing or materially delaying the consummation of the transactions contemplated by this Agreement.

(b) Each of Seller and Buyer agrees to make or cause to be made the necessary filing of a notification and report form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement (but in no event later than ten (10) Business Days after the date of this Agreement, unless agreed to in writing by the Parties) and to furnish as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act. In addition, each of Seller and Buyer agrees to make promptly any filing or notice that may be required with respect to the transactions contemplated by this Agreement or by the other Transaction Agreements under any other applicable antitrust or competition Laws or by any other Governmental Authority. Buyer shall have sole responsibility for the filing fees associated with the HSR Act filings and all other filing fees associated with any other filings required by any other applicable Laws or Governmental Order in any other jurisdictions. Each Party shall be responsible for its respective legal fees associated with the filing of a notification and report as it relates to the HSR Act.

Buyer shall not (i) withdraw its HSR notification and report form or (ii) enter into any agreement with any Governmental Authority to delay consummation of the transactions contemplated by this agreement without the prior written consent of the Seller.

(c) The Parties shall, and shall cause each of its Affiliates to, apply Commercially Reasonable Efforts to avoid or eliminate each and every impediment under any antitrust, competition, trade regulation or foreign investment regulation Law that may be asserted by any antitrust or competition or any other Governmental Authority or any other Person so as to enable the Parties to close the transactions contemplated hereby and by the other Transaction Agreements.

(d) Each of Buyer and Seller shall promptly notify the other of any oral or written communication it or any of its Representatives receives from any Governmental Authority relating to the matters that are the subject of this Section 7.5, permit the other Party and its Representatives to review in advance any communication relating to the matters that are the subject of this Section 7.5 proposed to be made by such Party to any Governmental Authority and provide the other Party with copies of all substantive correspondence, filings or other communications between them or any of their Representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, relating to the matters that are the subject of this Section 7.5, provided, however, that materials may be redacted (i) to remove references concerning the valuation of the Business, (ii) as necessary to comply with contractual arrangements or applicable Law and (iii) as necessary to address reasonable attorney-client or other privilege or confidentiality concerns. Neither Buyer nor Seller shall agree to participate in any meeting or discussion with any Governmental Authority in respect of any such filings, investigation or other inquiry unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, Section 7.2(b), and any other applicable terms and conditions of this Agreement the Parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods.

(e) Notwithstanding anything in this Agreement to the contrary (including Section 7.1), Buyer acknowledges on behalf of itself and its Affiliates and its and their Representatives, successors and assigns that the operation of the Business shall remain in the dominion and control of Seller until the Closing and that none of Buyer, any of its Affiliates or its or their respective successors or assigns will provide, directly or indirectly, any directions, orders, advice, aid, assistance or information to any director, officer or employee of any of Seller or its Affiliates, except as specifically contemplated or permitted by this ARTICLE VII or as otherwise consented to in writing in advance by an executive officer of Seller.

Section 7.6. Third Party Consents. Each of Buyer and Seller agrees to cooperate to obtain any consents and approvals from any third person other than a Governmental Authority that may be required in connection with the transactions contemplated by the Transaction Agreements, which, with respect to Seller, shall include the consents and approvals identified in Section 9.1(c) of the Seller Schedules (collectively, the "Third Party Consents"). Notwithstanding anything in this Agreement to the contrary, Seller shall not be required to compensate any Third Party, commence or participate in any Proceeding or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to remain secondarily liable or contingently liable for any Assumed Liability) to any Third Party (x) to obtain any such Third Party Consent or (y) in connection with Seller's obligations under Section 2.4.

Section 7.7. Further Action.

(a) Each of Seller and Buyer shall execute and deliver, or cause to be executed and delivered, such documents and other instruments and take, or cause to be taken, such further actions as may be reasonably required to carry out the provisions of the Transaction Agreements and give effect to the transactions contemplated hereby or thereby.

(b) Each of Seller and Buyer shall keep each other reasonably apprised of the status of the matters relating to the completion of the transactions contemplated hereby, including matters relating to the satisfaction of the conditions set forth in ARTICLE IX.

ARTICLE VIII

CERTAIN COVENANTS AND AGREEMENTS

Section 8.1. Access. In addition to the provisions of Section 8.2, from and after the Closing Date, in connection with any reasonable business purpose, including in connection with the preparation of Tax Returns, claims relating to Excluded Liabilities, the preparation of financial statements, SEC reporting obligations, or any Proceeding to which a Party or any of its Affiliates is a party, the requirements of any Laws applicable to the Party and its Affiliates or the determination of any matter relating to the rights or obligations of the Party and/or its Affiliates under any of the Transaction Agreements, upon reasonable prior notice, and except as determined in good faith by the other Party to be necessary to (a) ensure compliance with any applicable Law, (b) preserve any applicable privilege (including the attorney-client privilege), or (c) comply with any contractual confidentiality obligations, the other Party shall, and shall cause each of its Affiliates and Representatives to (i) afford the Representatives of the Party and its Affiliates reasonable access, during normal business hours, to the properties, electronically stored data and information, books and records of the other Party and its Affiliates in respect of the Business, the Transferred Assets (and related liabilities), the Product and the Development Product, and permit copies of such materials to be made for the Party and its Affiliates solely for use in connection with the reasonable business purposes described in this paragraph, (ii) furnish to the Representatives of the Party and its Affiliates such additional financial and other information regarding the Business, the Transferred Assets (and Assumed Liabilities), as the

Party, its Affiliates or their respective Representatives may from time to time reasonably request, (iii) make available to the Representatives of the Party and its Affiliates those employees of the other Party and its Affiliates whose assistance, expertise, testimony, notes and recollections or presence may be necessary to assist Seller and its Affiliates in connection with their inquiries for any of the purposes referred to above, including the presence of such persons as witnesses in hearings or trials for such purposes, and (iv) assist in providing or obtaining any necessary notice or consent for disclosure of Personal Information where required; provided, however, that the provision or such access and such data and information shall not unreasonably interfere with the business or operations of the other Party or any of its Affiliates; and provided, further, that the auditors and accountants of the other Party or its Affiliates shall not be obligated to make any work papers available to any Person except in accordance with such auditors' and accountants' normal disclosure procedures and then only after such Person has signed a customary agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants.

Section 8.2. Books and Records. Seller and its Affiliates shall have the right to retain copies of all Transferred Records relating to periods ending on or prior to the Closing Date. For a period of six (6) years after the Closing, Buyer shall: (a) retain the Transferred Records and all other books and records related to the Transferred Assets held by Buyer or any of its Affiliates; and (b) upon Seller's reasonable notice to Buyer and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such Transferred Records, including as may be necessary for the preparation of financial statements, regulatory filings, Tax Returns, or in connection with any Proceedings. Seller and its Affiliates shall be entitled, at their expense and subject to reasonable and customary confidentiality undertakings, to make copies of the books and records to which they are entitled access pursuant to this Section 8.2. For the sake of clarity, any Confidential Information in the Transferred Records or otherwise in the Transferred Assets shall become Buyer's Confidential Information upon Closing.

Section 8.3. Transfer and Assumption of Regulatory Commitments.

(a) From and after the Closing Date, Buyer will assume control of, and responsibility for all costs and Liabilities arising from or related to any Transferred Regulatory Documentation, including, but not limited to, any commitments or obligations to any Governmental Authority involving the Products arising after the Closing Date. Seller and Buyer acknowledge that the transfer of Regulatory Approvals to Buyer may be subject to the approval of applicable Governmental Authorities, and that, notwithstanding anything in this Agreement to the contrary, each Regulatory Approval shall continue to be held by Seller from and after the Closing Date until the date upon which the relevant Governmental Authority approves the Regulatory Approval naming Buyer or one of its Affiliates as the holder of such Regulatory Approval in the relevant country or territory covered by such Regulatory Approval. Each of Buyer and Seller shall cooperate to transfer to Buyer the Transferred Regulatory Documentation as quickly as possible following the Closing.

(b) As soon as practicable following the transfer of the Product NDA from Seller to Buyer, Seller shall transfer and Buyer shall assume the Seller NDC Numbers. Following the transfer of the Seller NDC Numbers to Buyer, Buyer shall assume any and all reporting obligations arising from or related to the Seller NDC Numbers, including any required reporting calculations to a Governmental Authority (such as MDRP, 340B CP and Non-FAMP). Upon Buyer's request, Seller shall provide Buyer with sales data from any pre-Closing period included in the Calendar Quarter in which the Closing occurs and other historical data required in connection with Buyer's reporting obligations to a Governmental Authority, in each case in accordance with Section 8.1. Each of Buyer and Seller shall cooperate to transfer the Seller NDC Numbers as quickly as possible following the transfer of the Product NDA.

Section 8.4. Certain Tax Matters.

(a) Transfer Taxes. Seller and Buyer shall equally share all stamp, documentary, filing, recording, registration, sales, use, transfer, value added, and other non-income or non-capital gains Taxes and all fees, duties, assessments and governmental charges imposed under applicable Law in connection with the transactions contemplated hereby (collectively, "Transfer Taxes") and (i) Seller shall prepare and timely file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and, if required by applicable Law, Buyer shall join in the execution of any such Tax Returns and other documentation in connection therewith, (ii) Seller shall deliver an invoice to Buyer and (iii) Buyer shall within thirty (30) days of receipt of such invoice reimburse Seller for the amount of Transfer Taxes for which Buyer is liable under this Section 8.4(a).

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Transferred Assets (including real estate Taxes, personal property Taxes and similar Taxes) for the tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Seller and Buyer as of the Closing Date with Buyer bearing the expense of Buyer's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Seller shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Buyer and Seller, and Buyer or Seller, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated amount is paid by each of Buyer and Seller.

Section 8.5. PIV Challenge. From and after the Closing Date, Buyer shall (a) use Commercially Reasonable Efforts to defend and litigate the PIV Challenge, (b) perform Seller's obligations under the Rose U Related Agreements, in accordance with the terms thereunder and (c) keep Seller informed of the entry into a settlement in connection with the PIV Challenge (as promptly as practicable, but in any event within five (5) Business Days of entering into such settlement). For the avoidance of doubt, Buyer shall have the right, in its sole discretion, to select counsel with respect to the PIV Challenge and, subject to clause (a) of the preceding sentence, the right to control the PIV Challenge, and if deemed by Buyer to be consistent with Buyer's use of Commercially Reasonable Efforts as described in this Section 8.5, to settle the PIV Challenge.

Section 8.6. Further Assurances.

(a) From time to time following the Closing, Seller and Buyer shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all reasonable further conveyances, notices, assumptions, releases and acquittances and instruments, and shall take such reasonable actions as may be necessary or appropriate, to make effective the transactions contemplated hereby as may be reasonably requested by the other party hereto (including (i) transferring back to Seller or its designated Affiliates (and having Seller or its Affiliate assume) any asset or liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which asset or liability was transferred to Buyer or its Affiliates at or after the Closing, and (ii) transferring to Buyer or its designated Affiliates (and having Buyer or its Affiliate assume) any asset or liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred to or assumed by Buyer or its Affiliates at the Closing.

(b) In the event that, notwithstanding the provisions of this Agreement, any Third Party attempts to collect an Assumed Liability from Seller or its Affiliates, or an Excluded Liability from Buyer or its Affiliates, and (i) any claim or demand is made by such Third Party in respect of any such liability against Seller or its Affiliates or Buyer or its Affiliates, respectively or (ii) any investigation, suit or Proceeding is commenced against Seller or its Affiliates or Buyer or its Affiliates, respectively, in respect of any such liability, then, in each such case, (y) the Party receiving such claim or demand, or notice of such investigation, suit or Proceeding, shall promptly notify the other party and send such party any relevant documentation received in connection therewith, and (z) the Party whose liability such liability was intended to be hereunder (*e.g.*, if such liability was specifically contemplated by this Agreement to be an Assumed Liability, then Buyer, or if such liability was specifically contemplated by this Agreement to be an Excluded Liability, then Seller) shall assume the defense and control of any such claim, demand, investigation, suit or Proceeding, and the other Party shall provide reasonably requested necessary support in connection therewith. For the avoidance of doubt, (1) Seller shall not be authorized to consent to a settlement of, or the entry of any judgment arising from, any Assumed Liability, without the consent of Buyer, (2) Buyer shall not be authorized to consent to a settlement of, or the entry of any judgment arising from, any Excluded Liability, without the consent of Seller; provided, that Buyer or Seller,

respectively, shall (A) pay all amounts arising out of such settlement or judgment concurrently with the effectiveness thereof and (B) obtain, as a condition of such settlement or other resolution, a complete release of Seller and its Affiliates or Buyer and its Affiliates, respectively and (3) any Losses incurred by Seller or its Affiliates in respect of any such Assumed Liability, or any Losses incurred by Buyer or its Affiliates in respect of any such Excluded Liability, shall be deemed to be Assumed Liabilities and Excluded Liabilities, respectively, and Buyer and Seller, shall reimburse Seller and Buyer, respectively, for any such reasonable and documented Losses.

Section 8.7. Corporate Existence. Until the date that is three (3) years from the Closing Date, the Seller shall maintain its corporate existence and will not liquidate, dissolve or otherwise wind up its affairs. At all times, until the first anniversary of the Closing Date, the Seller shall maintain at least $500,000 in unrestricted cash in its bank account. From the Closing Date until the date that is three (3) years from the Closing Date, if a Buyer Indemnified Party has (1) an undisputed, finally adjudicated or settled indemnification claim for which Seller has not made payment, (2) a pending indemnification claim against Seller under Article XI that is then subject to a Proceeding or (3) an indemnification claim made in good faith against Seller for which Buyer has properly notified Seller in accordance with Section 11.5 (the "Open Claims"), Seller shall not (i) dividend, distribute, or transfer or (ii) encumber, with the intention to frustrate a Buyer Indemnified Party's ability to enforce its indemnification rights, any cash received by Seller at a time when one or more Open Claims exist [***], Milestone Payments, Initial Sales-Based Payments or Sales-Based Payments in an amount so as to cause Seller's available cash balances to be less than the amount of Losses then owed or reasonably claimed to be then owing to a Buyer Indemnified Party pursuant to any Open Claim then in existence.

Section 8.8. No Setoff. Unless otherwise provided herein to the contrary, all payments to be made under this Agreement shall be made at the time and in the amounts provided for in this Agreement without set-off or deduction.

ARTICLE IX

CONDITIONS PRECEDENT

Section 9.1. Conditions to Each Party's Obligations. The obligation of Buyer to consummate the transactions contemplated by this Agreement and the obligations of Seller to consummate the transactions contemplated by this Agreement will be subject to the satisfaction prior to the Closing of the following conditions:

(a) Governmental Approvals. Any applicable waiting period under the HSR Act (and any extensions thereof, including any agreement with any Government Authority to delay consummation of the transactions contemplated by the Transaction Agreements) shall have expired or been terminated.

(b) No Governmental Order. There shall be no Governmental Order in existence that prohibits the sale of the Transferred Assets or the assumption of the Assumed Liabilities or other transactions contemplated by the Transaction

Agreements, and there shall be no proceeding pending by any Governmental Authority seeking such a Governmental Order.

(c) Third Party Consents. All Third Party consents listed on Section 9.1(c) of the Seller Schedules shall have been obtained.

Section 9.2. Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Seller contained in ARTICLE V (other than as set forth in clause (ii) of this Section 9.2(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the Closing Date as though made on the Closing Date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (other than any representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect as of such date); (ii) each of the Seller Fundamental Representations shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date, other than any Seller Fundamental Representations made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such date; and (iii) the covenants contained in this Agreement required to be complied with by Seller on or before the Closing shall have been complied with in all material respects. Buyer shall have received a certificate signed by an authorized officer of Seller, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (i) through (iii) (such certificate, the "Seller Officer's Certificate").

(b) Deliveries. Seller will have duly executed and delivered to Buyer each of the items required under Section 4.2.

Section 9.3. Conditions to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction on and as of the Closing of each of the following additional conditions:

(a) Representations and Warranties. (i) Each of the representations and warranties of Buyer contained in ARTICLE VI (other than as set forth in clause (ii) of this Section 9.3(a)) shall be true and correct (without giving effect to any "materiality" or "Material Adverse Effect" qualifiers therein) as of the Closing as if made on the Closing Date, other than representations and warranties made as of a specific date, which representations and warranties shall have been true and correct as of such date, except to the extent that any failure to be so true and correct would not, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement and any other Transaction Agreement

to which it or any of its Affiliates is a party or to consummate the transactions contemplated hereby or thereby; (ii) each of the Buyer Fundamental Representations shall be true and correct in all material respects as of the Closing Date as though made on the Closing Date, other than any Buyer Fundamental Representation made as of a specific date, which representations and warranties shall have been true and correct in all material respects as of such date; and (iii) the covenants contained in this Agreement required to be complied with by Buyer on or before the Closing shall have been complied with in all material respects. Seller shall have received a certificate signed by an authorized officer of Buyer, dated as of the Closing Date, with respect to the matters set forth in the foregoing clauses (i) through (iii) (such certificate, the "Buyer Officer's Certificate").

(b) Deliveries. Buyer will have duly executed and delivered to Seller each of the items required under Section 4.3.

Section 9.4. Frustration of Closing Conditions. Neither Seller nor Buyer may rely on the failure of any condition set forth in this ARTICLE IX to be satisfied if such failure was caused by such Party's failure to act in good faith or to use reasonable best efforts to cause the conditions to Closing of the other party to be satisfied, including as required by Section 7.5.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER

Section 10.1. Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Seller, if Buyer shall have breached any of its representations or warranties under this Agreement or failed to, or failed to cause its Affiliates to, comply with any covenant or agreement applicable to Buyer and/or its Affiliates that would cause any of the conditions set forth in Section 9.3 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Seller is not then in material breach of its obligations under this Agreement;

(c) by Buyer, if Seller shall have breached any of its representations or warranties under this Agreement or failed to comply with any covenant or agreement applicable to Seller that would cause any of the conditions set forth in Section 9.2 not to be satisfied, and such condition is incapable of being satisfied by the Outside Date; provided, however, that Buyer is not then in material breach of its obligations under this Agreement;

(d) by either Seller or Buyer if the Closing shall not have occurred on or before [***] (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any Party whose breach of this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to such Outside Date; or

(e) by either Seller or Buyer in the event that any Governmental Authority of competent jurisdiction shall have issued a final, non-appealable Governmental Order permanently restraining or prohibiting the transactions contemplated by this Agreement; provided, however, that the right to terminate this Agreement under this Section 10.1(e) shall not be available to any party whose action or failure to fulfill any obligation under this Agreement has been the cause of, or has resulted in, the issuance of such Governmental Order.

Section 10.2. Notice of Termination. Any Party hereto desiring to terminate this Agreement pursuant to this ARTICLE X shall give written notice of such termination to the other Party to this Agreement.

Section 10.3. Effect of Termination. In the event this Agreement is terminated pursuant to this ARTICLE X, this Agreement shall forthwith become null and void and be of no further force and effect and there shall be no liability on the part of any Party to this Agreement, except that this Section 10.3, and Sections 7.3 and 10.1 and ARTICLE XI shall survive any such termination in accordance with their terms and shall be enforceable hereunder. Nothing in this Section 10.3 shall be deemed to release any Party hereto from any Liability for any breach by such Party prior to the termination of this Agreement of any term of this Agreement; provided, however, that, if this Agreement is validly terminated pursuant to this ARTICLE X, no Party hereto shall have any remedy or right to recover for any Liabilities resulting from any breach of any representation or warranty contained herein unless such breach was a Willful Breach committed by the breaching Party.

Section 10.4. Event of Termination. In the event of termination of this Agreement pursuant to this ARTICLE X, written notice thereof will forthwith be given to the other party and the transactions contemplated by this Agreement will be terminated, without further action by any party. If the transactions contemplated by this Agreement are terminated as provided herein:

(a) Buyer will return all documents and other material received from Seller relating to the Products or the Transferred Assets or the transactions contemplated hereby, whether so obtained before or after the execution hereof, to Seller; and

(b) all confidential information received by Buyer with respect to Seller, the Products or the Transferred Assets will be treated in accordance with the Confidentiality Agreement as modified by this Agreement, which will remain in full force and effect in accordance with its terms notwithstanding the termination of this Agreement.

ARTICLE XI

INDEMNIFICATION

Section 11.1. Survival.

(a) All representations and warranties of Seller and Buyer contained herein or made pursuant hereto (other than the Seller Fundamental Representations,

Seller Special Representations and the Buyer Fundamental Representations) and the covenants in this Agreement that by their terms apply or are to be performed in whole or in part prior to the Closing Date will remain operative and in full force and effect until the expiration of the nine (9) month period following the Closing Date. The Seller Fundamental Representations and the Buyer Fundamental Representations will remain operative and in full force and effect until 90 days following the applicable statute of limitations. The Seller Special Representations will remain operative and in full force and effect until the expiration of the eighteen (18) month period following the Closing Date. The covenants and agreements of the Parties contained in this Agreement that by their terms apply or are to be performed in whole or in part after the Closing Date shall survive the Closing for the period provided in such covenants and agreements.

(b) Notwithstanding anything herein to the contrary, any breach of any representation, warranty, covenant or agreement in respect of which indemnification may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to Section 11.1(a) if notice of the breach thereof giving rise to such right of indemnification shall have been given in accordance with Section 11.5 at or prior to the time at which such representation, warranty, covenant or agreement would have otherwise expired pursuant to Section 11.1(a).

Section 11.2. Indemnification by Seller. Subject to Section 11.4, Seller hereby agrees that, from and after the Closing Date, Seller shall indemnify Buyer and its Affiliates and their respective directors, officers and employees (the "Buyer Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses to the extent such Losses arise from or in connection with the following:

(a) any breach by Seller of any representation or warranty made by Seller in ARTICLE V of this Agreement;

(b) any breach by Seller of any of its covenants, agreements or obligations to be performed following the Closing contained in this Agreement; and

(c) any and all Excluded Liabilities.

Section 11.3. Indemnification by Buyer. Subject to Section 11.4, Buyer hereby agrees that, from and after the Closing Date, Buyer shall indemnify Seller and its Affiliates and their respective directors, officers and employees (the "Seller Indemnified Parties") against, and hold them harmless from, and pay and reimburse such parties for, any Losses to the extent such Losses arise from or in connection with the following:

(a) any breach by Buyer of any representation or warranty made by Buyer in ARTICLE VI of this Agreement;

(b) any breach by Buyer of any of its covenants, agreements or obligations to be performed following the Closing contained in this Agreement; and

(c) any and all Assumed Liabilities.

Section 11.4. Limitations.

(a) The amount of any Losses for which either Seller or Buyer, as the case may be, is liable under this ARTICLE XI shall be reduced by (i) the amount of any insurance proceeds actually paid to the Indemnified Party (as defined herein) and (ii) the amount of any cash Tax benefit actually realized by the Indemnified Party in connection with such Loss and any of the circumstances giving rise thereto prior to the indemnification payment.

(b) Seller shall not be required to indemnify any Person for any Losses pursuant to Section 11.2(a) (other than with respect to the Seller Fundamental Representations) until the aggregate amount of an Indemnified Party's Losses exceed $[***] (the "Deductible"), after which Seller shall only be obligated for such aggregate Losses in excess of the Deductible.

(c) Seller shall not be required to indemnify any Person under Section 11.2(a) for an aggregate amount of Losses exceeding $[***] (other than for breaches of the Seller Fundamental Representations and Seller Special Representations). Seller shall not be required to indemnify any Person under Section 11.2(a) for an aggregate amount of Losses exceeding (i) $[***] for breaches of the Seller Special Representations and (ii) the Purchase Price actually paid to Seller under this Agreement at the time the claim is finally adjudicated or settled for breaches of the Seller Fundamental Representations.

(d) Subject to Section 11.4(g), the right of the Buyer Indemnified Parties and the Seller Indemnified Parties under this ARTICLE XI shall be the sole and exclusive monetary remedy of the Buyer Indemnified Parties and the Seller Indemnified Parties, as the case may be, with respect to matters covered hereunder, including claims relating to the Product, the Transferred Assets, Assumed Liabilities or Excluded Liabilities.

(e) Notwithstanding anything contained herein or elsewhere to the contrary, all "material" or similar materiality type qualifications contained in the representations and warranties set forth in this Agreement shall be ignored and not given any effect for the indemnification provisions of this ARTICLE XI, solely for purposes of determining the amount of any Losses incurred with respect to the indemnification provisions hereof.

(f) Notwithstanding anything herein to the contrary in this Agreement, a Party shall not be liable pursuant to this ARTICLE XI for any Loss incurred by the other Party hereto:

(i) relating to any Liability which is contingent only, unless and until such contingent Liability gives rise (within the time periods contemplated by Section 11.1) to an actual obligation to make payment;

(ii) to the extent that mitigation by the other party and its Affiliates (or its or their respective Representatives) as required by applicable Law would have eliminated or reduced such Loss; or

(iii) to the extent the Liability giving rise to the Loss is attributable to, or the amount of such Loss is increased as a result of, any: (A) applicable Law not in force at the date of this Agreement; or (B) any change of applicable Law (or any change in interpretation on the basis of applicable Law) or in applicable accounting standards, principles or interpretations.

(g) Notwithstanding anything herein to the contrary in this Agreement, nothing shall limit any remedy that a Buyer Indemnified Party may have against any Person for Fraud.

(h) Notwithstanding anything herein to the contrary, the Parties acknowledge and agree that any and all due diligence conducted with respect to the transaction, the Assets or the Business shall not in any way limit the rights of the Buyer Indemnified Parties to make a claim for indemnification hereunder.

Section 11.5. Procedure.

(a) Any Person to seeking indemnification provided for under this ARTICLE XI (an "Indemnified Party") in respect of, arising out of or involving a claim made by any Person (other than a party hereto) against an Indemnified Party (a "Third Party Claim"), shall promptly notify the indemnifying Party in writing of the Third Party Claim stating the amount of the Loss claimed, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise within ten (10) Business Days after receipt by such Indemnified Party of written notice of the Third Party Claim (or sooner, to the extent the nature of the Third Party Claim requires a response in a shorter period of time); provided, that failure to give such notice shall not affect the right to indemnification provided hereunder except to the extent the indemnifying Party shall have been actually and materially prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the indemnifying Party, as promptly as reasonably practicable following such Indemnified Party's receipt thereof, copies of all written notices and documents (including any court papers) received by such Indemnified Party relating to the Third Party Claim.

(b) If a Third Party Claim is made against an Indemnified Party, the indemnifying Party shall be entitled at its election and its cost to assume the defense of such Third Party Claim with counsel selected by the indemnifying Party; provided, that, should, following any such election, the indemnifying Party determine that it will contest its obligation to indemnify the Indemnified Party, it may do so only if the cessation of its control of the defense can be effected in a manner that does not materially prejudice the Indemnified Party's ability to conduct a defense of such matter. If the indemnifying Party assumes such defense, the Indemnified Party shall

nonetheless have the right to employ counsel separate from the counsel employed by the indemnifying Party; provided, that the indemnifying Party shall not be liable to such Indemnified Party for any fees of such separate counsel with respect to the defense of such Third Party Claim, unless the employment and reimbursement of such separate counsel is authorized by the indemnifying Party in writing. If the indemnifying Party does not assume such defense, and for any period during which the indemnifying Party has not assumed such defense, the indemnifying Party shall be liable for the reasonable fees and expenses of one (1) single counsel (in addition to reasonable fees and expenses of local counsel required in jurisdictions not central to the Third Party Claim) employed (and reasonably acceptable to the indemnifying Party) by such Indemnified Party (which reasonable fees and expenses shall be considered Losses for purposes of this Agreement). If the indemnifying Party chooses to defend a Third Party Claim or prosecute a claim in connection therewith, each Indemnified Party shall provide all cooperation as is reasonably requested by the indemnifying Party in such defense or prosecution.

(c) Notwithstanding anything to the contrary in this Section 11.5, no party may settle, compromise or discharge (and in doing so, make any reasonable admission of liability with respect to) such Third Party Claim other than for money damages only without the prior written consent of the other party, subject to such party paying or causing to be paid all amounts arising out of such settlement or obtaining and delivering to such other party, prior to the execution of such settlement, a general release prepared and executed by all Persons bringing such Third Party Claim.

(d) An indemnifying Party shall not be entitled to assume or continue control of the defense of any Third Party Claim if the Third Party Claim (A) relates to or arises in connection with any criminal proceeding, (B) seeks an injunction or other equitable relief against any Indemnified Party, or (C) if unsuccessful, would reasonably be expected to exceed the cap applicable to such a claim in Section 11.4(c) of this Agreement.

(e) In the event an Indemnified Party has a claim against an indemnifying Party under Sections 11.2 or 11.3 that does not involve a Third Party Claim, such Indemnified Party shall deliver notice of such claim to the indemnifying Party stating the amount of the Loss, if known, and method of computation thereof, the facts and circumstances giving rise to such claim in reasonable detail and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed to arise, within ten (10) Business Days of becoming aware of the facts or circumstances giving rise to such claim; provided, that failure to give such notice shall not affect the indemnification provided hereunder except to the extent the indemnifying Party shall have been actually prejudiced as a result of such failure. The Indemnified Party and the indemnifying Party shall, for a period of not less than twenty (20) Business Days following receipt by the indemnifying Party of the notice of such claim, negotiate, in good faith, to resolve the claim, and such Indemnified Party shall not commence Proceedings with respect to such claim prior to the end of such period.

Section 11.6. Tax Treatment of Indemnification Payments. Seller and Buyer agree to treat any indemnification payment made pursuant to this ARTICLE XI as an adjustment to the Purchase Price for U.S. federal, state, local and foreign income tax purposes.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Expenses. Except as may be otherwise specified in the Transaction Agreements, all costs and expenses, including fees and disbursements of counsel, financial advisers and accountants, incurred in connection with the Transaction Agreements and the transactions contemplated thereby shall be paid by the Party incurring such costs and expenses (or the Party on whose behalf such costs and expenses have been incurred), irrespective of when incurred or whether or not the Closing occurs or this Agreement is terminated.

Section 12.2. Notices. All notices and other communications under or by reason of the Transaction Agreements shall be in writing and shall be deemed to have been duly given or made (a) when personally delivered, (b) when delivered by e-mail transmission with receipt confirmed or (c) upon delivery by overnight courier service, in each case to the addresses and attention Parties indicated below (or such other address, e-mail address or attention Party as the recipient Party has specified by prior notice given to the sending Party in accordance with this Section 12.2):

if to Seller, to:

Dermira, Inc.
[***]

[***]:

[***]

and

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Raymond O. Gietz, Esq.
Email: raymond.gietz@weil.com

if to Buyer, to:

Journey Medical Corporation
9237 E Via De Ventura Blvd.
Suite 105
Scottsdale, Arizona 85258
Attention: President & CEO
Email: cmaraoui@jmcderm.com

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

Journey Medical Corporation
9237 E Via De Ventura Blvd.
Suite 105
Scottsdale, Arizona 85258
Attention: General Counsel
Email: ralloush@jmcderm.com

and

Cooley LLP
Reston Town Center
11951 Freedom Drive, 14th Floor
Reston, VA 20190
Attention: Kenneth Krisko
Email: kkrisko@cooley.com

Section 12.3. Public Announcements. The press release regarding this Agreement shall be a press release mutually acceptable to each of Seller and Buyer. Following the release of such aforementioned press release, neither Seller nor Buyer (nor any of their respective Affiliates) shall issue any other press release or make any other public announcement with respect to any of the Transaction Agreements without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed), except as may be required by Law (including any disclosure obligations under the federal securities Laws or applicable accounting principles) or the rules and regulations of any national securities exchange upon which the securities of Seller, Buyer or their respective Affiliates are listed, in which case the Party proposing or required to issue such press release or make such public announcement shall use its commercially reasonable efforts to consult in good faith with the other Party before making any such public announcements; provided, that neither Seller nor Buyer will be required to obtain the prior approval of or consult with the other Party in connection with any such press release or public announcement if such press release or public announcement consists solely of information previously disclosed in all material respects in a previously distributed press release or public announcement.

Section 12.4. Severability. If any term or other provision of this Agreement is held invalid, illegal or incapable of being enforced under any applicable Law or as a matter of public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. If the final judgement of a court of competent jurisdiction or other Governmental Authority declares that any term or other provision hereof is invalid, illegal or unenforceable, Seller and Buyer agree that the court making such determination will have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid, legal and

enforceable and that comes closest to expressing the intention of the invalid, illegal or unenforceable term or provision.

Section 12.5. Counterparts. This Agreement may be executed in one or more counterparts, and signature pages may be delivered by facsimile, portable document format (PDF), DocuSign or any other electronic signature complying with the U.S. federal ESIGN Act of 2000 or the Electronic Signatures and Records Act of the State of New York, each of which shall be deemed an original, but all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart.

Section 12.6. Entire Agreement. This Agreement (including the Schedules) and the other Transaction Agreements (and all exhibits and schedules hereto and thereto) and the Confidentiality Agreement collectively constitute and contain the entire agreement and understanding of Seller and Buyer with respect to the subject matter hereof and thereof and supersede all prior negotiations, correspondence, understandings, agreements and contracts, whether written or oral, among the Parties and thereto respecting the subject matter hereof and thereof.

Section 12.7. Assignment. This Agreement shall not be assigned by (a) Buyer without the prior written consent of Seller, and (b) Seller, without the prior written consent of Buyer, except that each of Buyer and Seller may assign this Agreement to any of its Affiliates, upon prior written notice to the other party; provided, that no such assignment shall release Buyer or Seller, as applicable, from any Liability or obligation under this Agreement. Following the Closing, neither Buyer nor its Affiliates shall transfer, sell or assign to any Person who is not an Affiliate of Buyer, all or substantially all of Buyer's rights related to the Product or Development Product or the Transferred Assets or its rights and obligations under this Agreement, except as provided in the next sentence. Notwithstanding the foregoing, following the Closing Buyer may transfer, sell or assign this Agreement together with Buyer's rights related to the Product, the Development Product and the Transferred Assets (a "Sale Transaction") as follows: either (x) in connection with any sale of all or substantially all of the assets of Buyer (whether pursuant to sale of assets, stock, merger or reorganization of Buyer) to any Third Party successor, assignee or transferee or (y) in connection with a Sale Transaction that is not a transaction contemplated by clause (x), to any Third Party that is a publicly listed pharmaceutical company with a market capitalization at the time of such sale of at least $[***], provided, that in each case of clauses (x) and (y), the successor, assignee, or transferee expressly assumes in writing the obligations of Buyer under this Agreement, including Buyer's diligence obligations under this Agreement, payment of the Milestone Payments, Initial Sales-Based Payments, Sales-Based Payments and [***] (except to the extent previously paid). For the avoidance of doubt, this Section 12.7 shall not restrict or prevent in any way Buyer from entering into a license or sublicense agreement, distribution agreement or other development, research, commercial or similar agreement with any Third Party in connection with the Product, Development Product or other Milestone Product, or in connection with any of the Transferred Assets. Buyer shall deliver a copy of the written definitive agreements related to any Sale Transaction to Seller within five (5) Business Days following the consummation of such transaction, including such agreements pursuant to which the successor, assignee, or transferee expressly assumes Buyer's obligations as set forth in

the preceding sentence. Any attempted assignment in violation of this Section 12.7 shall be void ab initio. This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their permitted successors and assigns.

Section 12.8. No Third-Party Beneficiaries and Affiliates. Except as provided for herein, this Agreement is for the sole benefit of the Persons specifically named in the preamble to this Agreement as Parties and their permitted successors and assigns, no Party hereto is acting as an agent for any other Person not named herein as a Party hereto, and nothing in this Agreement or any other Transaction Agreements, express or implied, is intended to or shall confer upon any other Person, any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 12.9. Amendment; Waiver. No provision of this Agreement or any other Transaction Agreement may be amended, supplemented or modified, including any Exhibits or Schedules thereto, except by a written instrument making specific reference hereto or thereto signed by all the parties to such agreement. No consent from any Indemnified Party under Section 11.5 (in each case other than the Parties) shall be required to amend this Agreement. At any time before the Closing, either Seller or Buyer may (a) extend the time for the performance of any obligation or other acts of the other Person, (b) waive any breaches or inaccuracies in the representations and warranties of the other Person contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance with any covenant, agreement or condition contained in this Agreement, but such waiver of compliance with any such covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Any such waiver shall be in a written instrument duly executed by the waiving Party. No failure on the part of either Person to exercise, and no delay in exercising, any right, power or remedy under any Transaction Agreement except as expressly set forth in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Person preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.10. Schedules. Any disclosure with respect to a Section of this Agreement, including any Section of the Schedules, shall be deemed to be disclosed for purposes of other Sections of this Agreement, including any Section of the Schedules, to the extent that the relevance of such disclosure would be reasonably apparent to a reader of this Agreement and such disclosure. Matters reflected in any Section of the Schedules are not necessarily limited to matters required by this Agreement to be so reflected and such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. No reference to or disclosure of any item or other matter in any Section of this Agreement, including any Section of the Schedules, shall be construed as an admission of Liability or an indication that such item or other matter is material or that such item or other matter is required to be referred to or disclosed in this Agreement. Without limiting the foregoing, no such reference to or disclosure of a possible breach or violation of any contract, Law or Governmental Order shall be construed as an admission or indication that breach or violation exists or has actually occurred.

Section 12.11. Governing Law; Submission to Jurisdiction.

(a) This Agreement and each other Transaction Agreement and all Proceedings (whether at Law, in contract, tort or otherwise, or in equity) that may be based upon, arise out of or relate to this Agreement, or any other Transaction Agreement or the negotiation, execution or performance of this Agreement or any other Transaction Agreement or the inducement of any party to enter into any Transaction Agreement, whether for breach of contract, tortious conduct or otherwise, and whether now existing or hereafter arising (each, a "Transaction Dispute"), shall be governed by and enforced in accordance with the internal laws of the State of New York applicable to contracts made and performed in such State without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of New York to be applied.

(b) The Parties hereby irrevocably submit to the exclusive jurisdiction the U.S. District Court for the Southern District of New York (where federal jurisdiction exists) or the Commercial Division of the Courts of the State of New York sitting in the County of New York (where federal jurisdiction does not exist), and the appellate courts having jurisdiction of appeals in such courts, in each case, over any Transaction Dispute and each Party hereby irrevocably agrees that all claims in respect of any Transaction Dispute shall be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Transaction Dispute brought in such court or any defense of inconvenient forum for the maintenance of such Transaction Dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any party to this Agreement in any Proceeding by the delivery of a copy thereof in accordance with the provisions of Section 12.2.

(d) The foregoing consent to jurisdiction will not constitute submission to jurisdiction or general consent to service of process in the State of New York for any purpose except with respect to any Transaction Dispute.

Section 12.12. Specific Performance. Each Party hereto acknowledges and agrees that irreparable damage would occur, damages would be difficult to determine and would be an insufficient remedy and no adequate remedy other than specific performance would exist at law or in equity in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached (or any party hereto threatens such a breach). Therefore, it is agreed that each Party shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which it may be entitled, at Law or in equity. Such remedies shall, however, be cumulative with and not exclusive of and shall be in addition to any other remedies which any party may have under this Agreement, or at Law or in equity or otherwise, and the exercise by a party hereto of any one remedy shall not preclude the

exercise of any other remedy. The Parties further agree not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to applicable Law or inequitable for any reason, and not to assert that a remedy of monetary damages would provide an adequate remedy for any such breach or that Seller or Buyer otherwise have an adequate remedy at Law. If any Party hereto brings any claim to enforce specifically the performance of the terms and provisions of this Agreement, in accordance with the terms of this Agreement, then, notwithstanding anything to the contrary contained herein, the Outside Date shall automatically be extended by the period of time between the commencement of such claim and the date on which such claim is fully and finally resolved.

Section 12.13. Mitigation. Each Party hereto shall, and shall cause its applicable Affiliates and Representatives to, to the extent required by applicable Law, take reasonable steps to mitigate their respective Losses upon and after becoming aware of any fact, event, circumstance or condition that has given rise to or would reasonably be expected to give rise to, any Losses for which it would have the right to seek damages hereunder.

Section 12.14. Limitation on Liability. Notwithstanding anything in this Agreement or in any other Transaction Agreement to the contrary, in no event shall either Seller or Buyer have any Liability under any Transaction Agreement (including under this Section 12.14) for any consequential, special, incidental, indirect or punitive damages, lost profits or similar items (including loss of revenue, income or profits, diminution of value or loss of business reputation or opportunity relating to a breach or alleged breach of this Agreement), or damages calculated on multiples of earnings or other metrics approaches (except that special and punitive damages shall not be excluded with respect to any such damages payable in connection with a Third Party Claim).

Section 12.15. Rules of Construction. Interpretation of this Agreement (except as specifically provided in this Agreement, in which case such specified rules of construction shall govern with respect to this Agreement) shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph and Exhibit are references to the Articles, Sections, paragraphs and Exhibits to this Agreement unless otherwise specified; (c) the terms “hereof”, “herein”, “hereby”, “hereto” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (d) references to “$” shall mean U.S. dollars; (e) the word “including” and words of similar import shall mean “including without limitation,” unless otherwise specified; (f) the word “or” shall not be exclusive unless clearly indicated and the occasional inclusion of "and/or" will not change this interpretation; (g) references to “written” or “in writing” include in electronic form; (h) provisions shall apply, when appropriate, to successive events and transactions; (i) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (j) Seller and Buyer have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening any party by virtue of the authorship of any of the provisions in this Agreement; (k) a reference to any Person includes such Person’s permitted successors and permitted assigns; (l) any reference to “days” means calendar days unless Business Days are expressly specified; (m)

when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded and, if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; (n) each of the representations and warranties of the Parties set forth herein shall be deemed to have been made as of the date such representation and warranty is made hereunder; and (o) an item arising with respect to a specific representation or warranty shall be deemed to be "reflected on" or "set forth in" a balance sheet or financial statements, to the extent Further, prior drafts of this Agreement or the other Transaction Agreements or the fact that any clauses have been added, deleted or otherwise modified from any prior drafts of this Agreement or any of the other Transaction Agreements shall not be used as an aid of construction or otherwise constitute evidence of the intent of the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of such prior drafts.

Section 12.16. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY TRANSACTION DISPUTE. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF A DISPUTE, 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 TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.16.

Section 12.17. Admissibility into Evidence. All offers of compromise or settlement among the Parties or their Representatives in connection with the attempted resolution of any Transaction Dispute (a) shall be deemed to have been delivered in furtherance of a Transaction Dispute settlement, (b) shall be exempt from discovery and production and (c) shall not be admissible into evidence (whether as an admission or otherwise) in any proceeding for the resolution of the Transaction Dispute.

Section 12.18. Privilege. Buyer, for itself and its Affiliates, and its and its Affiliates' respective successors and assigns, hereby irrevocably and unconditionally acknowledges and agrees that all attorney-client privileged communications between Seller and its respective current or former Affiliates or Representatives and their counsel, including Weil, Gotshal & Manges LLP, made before the Closing Date in connection with the negotiation, preparation, execution, delivery and Closing under any Transaction Agreement, any Transaction Dispute or, before the Closing, any other matter, shall continue after the Closing to be privileged communications with such counsel and neither Buyer nor any of its former or current Affiliates or Representatives nor any Person purporting to act on behalf of or through Buyer or any of its current of former Affiliates or Representatives, shall seek to obtain the same by any process on the grounds that the privilege attaching to such communications belongs to Buyer or the Business or on any other grounds.

Section 12.19. Non-Recourse. All Proceedings (whether at Law, in contract, tort or otherwise, or in equity) that may be based upon, arise out of or relate to this Agreement or the other Transaction Agreements, or the negotiation, execution or performance of this Agreement or the other Transaction Agreements (including any representation or warranty made in or in connection with this Agreement or the other Transaction Agreements or as an inducement to enter into this Agreement or the other Transaction Agreements), may be made only against the entities that are expressly identified as Parties hereto and parties thereto. No Person who is not a named party to this Agreement or the other Transaction Agreements, including any past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of any named party to this Agreement or the other Transaction Agreements ("Non-Party Affiliates"), shall have any liability (whether at Law, in contract, tort or otherwise, or in equity, or based upon any theory that seeks to impose liability of an entity party against its owners or affiliates) for any obligations or liabilities arising under, in connection with or related to this Agreement or such other Transaction Agreement (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or such other Transaction Agreement (as the case may be) or the negotiation or execution hereof or thereof; and each party hereto waives and releases all such liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third party beneficiaries of this provision of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective representatives thereunto duly authorized, all as of the date first written above.

DERMIRA, INC.

By: /s/
Name:
Title:

JOURNEY MEDICAL CORPORATION

By: /s/
Name:
Title:

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

LICENSE AND SUPPLY AGREEMENT

BY AND BETWEEN

[***]

AND

JOURNEY MEDICAL CORPORATION

DATED AS OF

JULY 29, 2020

LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement (this "Agreement"), is dated as of July 29, 2020 (the "Effective Date"), by and between [***] (the "Licensor") and Journey Medical Corporation, a Delaware corporation located at 9237 East Via De Ventura Blvd., Suite 105, Scottsdale, AZ 85258, USA (the " Licensee"). Licensor and Licensee may each be referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Licensor owns and markets the Licensed Product (as defined below);

WHEREAS, the Licensee desires (i) to receive the exclusive right and license to Commercialize the Product in the Territory (with each capitalized term as defined below) and (ii) for Licensor to manufacture and supply the Product to Licensee for such purpose, each upon the terms and subject to the conditions set forth herein; and

WHEREAS, in order to increase access to the Licensed Product in the Territory, the Parties are entering into this Agreement and Licensor is granting the rights provided herein to Licensee upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1 Definitions. Capitalized terms used in this Agreement have the meanings specified in Schedule 1.1 to this Agreement. Certain other terms are defined in the text of this Agreement.

Section 1.2 Other Definitional and Interpretive Provisions.

(a) The words "hereof", "herein", "hereto" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural and vice versa.

(c) The terms "dollars" and "$" shall mean United States of America dollars.

(d) The term "including" (and with correlative meaning "include") shall mean "including, without limitation."

(e) Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assign are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity.

(f) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended, modified or supplemented and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.

(g) When a reference is made in this Agreement to an Article, a Section, an Exhibit or a Schedule, such reference shall be to an Article of, a Section of, an Exhibit to or a Schedule to, this Agreement unless otherwise indicated.

(h) The Parties acknowledge that: (i) this Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party; (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Agreement (including any exhibits and schedules attached hereto) and have contributed to its revision; (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Agreement; and (iv) the terms and provisions of this Agreement shall be construed fairly as to all Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of this Agreement.

ARTICLE II
LICENSE

Section 2.1 License. Subject to the terms of this Agreement, including the limitations set forth in Section 2.2 and 2.3, Licensor hereby grants to Licensee a non-transferable, non-assignable, non-sublicensable (except in accordance with this Section 2.1), exclusive (even as to Licensor) right and license, under the Product [***] and any intellectual property rights controlled by Licensor, to market, promote, import, export, offer to sell, sell, have sold and distribute ("Commercialize") a branded version of the Licensed Product under the Licensee Trade Name (the "Product") in the Territory and in accordance with this Agreement. The Parties expressly agree that Licensor (and its applicable Affiliates) shall not have any restrictions on its ability to Commercialize the Licensed Product in the Territory under Licensor's label which contains the {***] Trademarks (the "[***] Product"), which trademarks Licensor shall be permitted to update at its sole option. Licensee will sell the Product only in the Territory and will not directly or indirectly sell or otherwise distribute the Product outside of the Territory. The license provided herein shall terminate at the end of the Term. Licensee shall not sublicense its rights under this Agreement without the prior written consent of Licensor (not to be unreasonably withheld, conditioned or delayed) other than to an Affiliate of Licensee, provided further that (i) any sublicense provided hereunder is in writing and its terms are consistent with the terms and conditions of this Agreement; (ii) Licensee shall be responsible to Licensor for the performance of its sublicensees; (iii) any act or omission by a sublicensee that would be a breach of this Agreement had it been performed (or not performed) by Licensee shall be treated as a breach of this Agreement by Licensee; (iv) upon request, Licensee will provide Licensor a copy of any such sublicense (with reasonable redaction to protect any financial or other sensitive information), to permit Licensor to assess such sublicenses compliance with the terms and conditions of this Agreement; and (v) sublicensee is not a Direct Competitor of Licensor. Any transfer of Licensee's rights hereunder shall be permitted solely in accordance with Section 14.1.

Section 2.2 Customers. Licensee shall only sell or have sold the Product to Specialty Pharmacies, provided however, that Licensee shall be permitted to sell up to a maximum of [***] ([***]%) percent of its total annual volume of Units of Product in a Calendar Year to Wholesalers (the "Wholesaler Limit"). The Wholesaler Limit shall be measured on a Calendar Year basis. Licensor acknowledges and agrees that as long as Licensee is using Commercially Reasonable Efforts not to exceed the Wholesaler Limit, if the Wholesaler Ratio in a Calendar Year does not exceed [***] ([***]%) percent, Licensee shall not be deemed to be in material breach of this Section 2.2. Licensee acknowledges and agrees, that notwithstanding the foregoing sentence or anything to the contrary provided herein or elsewhere, if the Wholesaler Ratio exceeds (i) [***] ([***]%) for three (3) consecutive Calendar Years or (ii) [***] ([***]%) percent in any Calendar Year, it shall be deemed a material breach of this Agreement, regardless of the efforts expended by Licensee.

Section 2.3 Trade Name; Trademarks.

(a) Licensee shall sell the Product under a trade name owned by Licensee (the 'Licensee Trade Name"), which Licensee Trade Name shall be subject to the prior approval of (i) Licensor, not to be unreasonably withheld (it being understood that, as of the Effective Date, Licensor has approved of the trade name(s) set forth in Schedule 2.3(a)), (ii) the members, sponsors and administrators of the REMS Program (as applicable) and (iii) the applicable Governmental Entities in the Territory. Licensee shall sell the Product in its own trade dress, trademarks, service marks, corporate names, logos, slogans and NDC/labeler codes, all of which shall not contain the [***] Trade Dress or any [***] Trademark (all of the foregoing used by Licensee on or for the Product, together with the Licensee Trade Name, the "Licensee Trademarks"); provided that, the foregoing restriction shall be subject to Sections 4.3 and 13.2. Subject to Licensor's limited rights with respect to [***]-Related Trade Name Submissions, as further described below, Licensee shall own all rights in the Licensee Trademarks and shall be solely responsible for any and all trademark filings, maintenance, payments and other actions required to be taken in connection with the USPTO or other relevant Governmental Authorities to maintain in full force and effect all intellectual property rights relating to the Licensee Trademarks (collectively, "Licensee Trademark Submissions").

(b) As soon as practicable following the date hereof, Licensee shall provide Licensor with its requested Licensee Trade Name, and upon Licensor's approval in accordance with Section 2.3(a) (which, for clarity, shall be required only in the event the proposed Licensee Trade Name is different from the trade name(s) set forth in Schedule 2.3(a)), the Licensor and Licensee shall work together in good faith to enable Licensor to make any and all necessary submissions, notifications and/or amendments under the Product [***] (to the extent not already obtained as of the Effective Date) to Governmental Entities (other than the USPTO) in each case, as required to Commercialize the Product in the Territory with the Licensee Trade Name (each an "[***]-Related Trade Name Submission" and collectively, the "[***]-Related Trade Name Submissions"). The Parties agree and acknowledge that the [***]-Related Trade Name Submission relating to the trade name set forth in Schedule 2.3(a) shall be made by Licensor by filing a prior- approval supplement with the FDA (the "Accutane PAS"). As soon as practicable following the Effective Date, Licensor and Licensee shall work together in good faith to enable Licensor to take such actions necessary to include the Product (under the Licensee Trade Name) in the REMS Program which may include amendments to the REMS Program and related documents and updates to the REMS Program necessary to permit Licensee to Commercialize the Product under the Licensee Trade Name in the Territory (collectively, the " REMS Related Approvals"). Licensor shall be responsible for any initial filing fees due upon filing of the Accutane PAS, if any. Licensee shall be responsible for any and all other costs and expenses associated with (i) any [***]-Related Trade Name Submissions and (ii) otherwise obtaining Regulatory Approval of the Licensee Trade Names. The fees and expenses related to the REMS Related Approvals shall be allocated between the Parties as described in Section 4.8. Licensor shall own all [***]-Related Trade Name Submissions and any Regulatory Approvals obtained in connection therewith (excluding, for clarity, any Licensee Trademark Submissions) ("[***]-Related Trade Name Approvals") and the REMS Related Approvals, all of which shall be deemed Regulatory Documentation. The Parties agree that Licensor shall make all [***]-Related Trade Name Submissions and other actions to obtain REMS Related Approvals as required to enable the sale of Product in the Territory under the Licensee Trade Name, and Licensee shall not be permitted to make any [***]-Related Trade Name Submissions or other submissions to any Governmental Authorities or REMS Program, except for Licensee Trademark Submissions or such other submissions as the Parties may mutually agree in writing. Licensor shall not be permitted to Commercialize any Products containing any Licensee Trademarks. This Section 2.3(b) shall not apply to Licensee's obligation to register as a "wholesaler" under the REMS Program, which shall be the responsibility of Licensee.

Section 2.4 Exclusivity. During the Term:

(a) Licensor will not grant to any Third Party the right to Commercialize the Licensed Product under the Product [***], other than with respect to the [***] Product, in the Territory; and

(b) Subject to the terms and conditions of this Agreement (including Section 5.2(h)), Licensee shall purchase its requirements of Products exclusively from Licensor.

Section 2.5 Non-Compete. During the Non-Compete Period, Licensee shall not, and shall cause its Affiliates not to, develop or have developed for themselves or any Third Party any generic, branded or private labeled version of the Licensed Product or any other generic, branded or private labeled product, in each case, (i) containing Isotretinoin as the sole active ingredient, (ii) that is in any of the same dosage strengths as the Licensed Product, and (iii) that is AB Rated with respect to either the Licensed Product, the reference listed drug set forth on the [***]or [***] ((i)-(iii) collectively, a "Competitive Product"). Licensee shall not Knowingly provide to any Person any assistance or information relating to the development, manufacture and supply of the Licensed Product, the [***] or [***], in order to facilitate the development, manufacture, or commercialization of a Competitive Product in violation of this Section 2.5 (it being understood that this restriction shall not apply to, and shall not be construed to limit in any way, Licensee's or its Affiliates' exercise of its or their rights or performance of its or their obligations under this Agreement with respect to the Licensed Product, including in connection with Section 5.2(h)).

ARTICLE III
MILESTONES AND ROYALTIES

Section 3.1 Milestones.

(a) Milestone Payments; Events. In addition to any other amounts due and payable to the Licensor hereunder, as consideration for the license provided herein, subject to the terms and conditions of this Agreement, Licensee shall pay to the Licensor the following non-refundable, non-creditable amounts (each, a "Milestone Payment") upon the achievement (except as adjusted as set forth below) by or on behalf of the Licensee or its Affiliates, or its or their permitted sublicensees, if any, of the following events (each, a "Milestone Event"):

(i) one million dollars ($1,000,000) upon the execution of this Agreement (the "Upfront Payment");

(ii) [***] ($[***]) upon approval of the Accutane PAS by the FDA (as evidenced by receipt of written correspondence (or similar) from the FDA stating that the Accutane PAS has been approved, which correspondence Licensor shall promptly provide to Licensee), provided, however, that if Licensee voluntarily determines to use a Licensee Trade Name other than the trade name set forth on Schedule 2.3(a) prior to the FDA making a final determination on whether to approve or reject such trade name, such amount shall be due upon Licensee's notification to Licensor that Licensee has elected to use an alternative trade name (the "Accutane PAS Milestone");

(iii) [***] ($[***]) upon the notification by Licensor or its applicable Affiliate that the Initial Firm Order of Product is available for pick-up or shipment to Licensee as a Finished Product from the third party finished packaging manufacturer (in accordance with the order) (the "Initial Order Milestone");

(iv) [***] ($[***]) upon the eighteen (18) month anniversary of the Effective Date;

(v) [***] ($[***]) upon the twenty-four (24) month anniversary of the Effective Date;

(vi) [***] ($[***]) upon the thirty-six (36) month anniversary of the Effective Date;

(vii) [***] ($[***]) upon attainment of $[***] aggregate Net Sales of Product by or on behalf of Licensee (or its Affiliates, or its or their permitted sublicenses, if any) in a Calendar Year;

(viii) [***] ($[***]) upon attainment of $[***] dollars aggregate Net Sales of Product by or on behalf of Licensee (or its Affiliates, or its or their permitted sublicenses, if any) in a Calendar Year; and

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(ix) [***] ($[***]) upon attainment of $[***] aggregate Net Sales of Product by or on behalf of Licensee (or its Affiliates, or its or their permitted sublicenses, if any) in a Calendar Year.

(b) Adjustments to Milestones Payments.

(i) Notwithstanding the foregoing, in the event that the FDA rejects the trade name set forth inSchedule 2.3(a) submitted pursuant to the Accutane PAS (except in a case where Licensee voluntarily determines to use a Licensee Trade Name other than the trade name set forth on Schedule 2.3(a) prior to the FDA making a final determination on whether to approve or reject such trade name) (an "Accutane PAS Rejection"), the Milestone Payments and Milestone Events set forth in Section 3.1(a) shall be modified as follows:

(A) The Milestone Payment for the Accutane PAS Milestone, as set forth in Section 3.1(a)(ii), shall no longer be payable by Licensee;

(B) The Milestone Payment set forth in Section 3.1(a)(iv) shall remain [***] ($[***]) and shall be payable upon the twenty-four (24) month anniversary of the Effective Date;

(C) The Milestone Payment set forth in Section 3.1(a)(v) shall be increased to [***] ($[***]) and shall be due on the thirty (30) month anniversary of the Effective Date;

(D) The Milestone Payment set forth in Section 3.1(a)(vi) shall remain [***] ($[***]) and shall be payable upon the earlier to occur of (x) upon attainment of $[***] in aggregate Net Sales of Product by or on behalf of Licensee (or its Affiliates, or its or their permitted sublicenses, if any) in a Calendar Year or (y) upon attainment of $[***] cumulative Net Sales of Product by or on behalf of Licensee (or its Affiliates, or its or their permitted sublicenses, if any); and

(E) The Milestone Payment for the Initial Order Milestone, as set forth in Section 3.1(a)(iii), shall not be modified.

(F) The Milestone Payments set forth in Section 3.1(a)(vii), Section 3.1(a)(viii) and Section 3.1(1)(ix) shall not be modified.

(ii) In the event that the Initial Order Milestone is delayed beyond the ten (10) month anniversary of the Effective Date other than as a result of (A) Licensee's failure to promptly provide Licensor or its Affiliates with any documentation or information reasonably requested in writing (which shall include notification by e-mail) by Licensor (x) in order to supply the Initial Firm Order (including, preparation of the final digital proofs for secondary packaging, pursuant to Section 4.3), provided that Licensor submits such request with reasonable advance notice to Licensee or (y) relating to any response or submission to any Governmental Entity to which Licensee has an obligation to provide or is required to prepare a response for Licensor to provide to such Governmental Entity, including to the extent specified as such in Section 4.3 and Section 4.7, (B) any breach of any covenant hereunder by Licensee of which Licensor has notified Licensee in writing (which shall include notification by e-mail) and Licensee has failed to cure within seven (7) Business Days after receipt of such notice, and which breach directly causes a delay in achieving the Initial Order Milestone (which includes, but is not limited to, the failure of Licensee to provide timely Forecasts in accordance with Section 5.1 or place the Initial Order (defined below) in accordance with the remainder of this Section 3.1(b)), or (C) any delays attributable to customs clearance of Products that were otherwise delivered to Licensee in a timely manner in accordance with Sections 5.2 and 5.4 (each of (A), (B) and (C), a "Permissible Delay"), each of the Milestone Payments payable pursuant to Sections 3.1(a)(iv), (v), and (vi) above shall be deferred by the amount of time equal to the number of days between the ten (10) month anniversary and the achievement of the Initial Order Milestone. Following an Accutane PAS Rejection, the term "ten (10) month" in the foregoing sentence shall be replaced with "sixteen (16) month" and shall only apply to the milestones set forth in Sections 3.1(a)(iv) and 3.1(a)(v), as adjusted by Sections 3.1(b)(i)(B) and 3.1(b)(i)(C), respectively.

(A) Notwithstanding the foregoing and except as set forth in Section 3.1(b)(ii)(B), no Milestone Payments shall be deferred pursuant to Section 3.1(b)(ii) unless Licensee has placed the initial Firm Order for Product with Licensor (the "Initial Firm Order") and a corresponding purchase order with the third party finished packaging manufacturer relating to such Initial Firm Order (the "Initial Packaging Order"), on or before the three (3) month anniversary of the Effective Date (the "Initial Order Date").

(B) In the event that prior to the Initial Order Date an Accutane PAS Rejection occurs (or the FDA provides written notice to Licensor that an Accutane PAS Rejection will occur), Licensee shall not be required to place the Initial Firm Order or Initial Packaging Order prior to the Initial Order Date.

(C) The Parties expressly agree that in order for Licensor to complete the Initial Order Milestone on or prior to the ten (10) month anniversary of the Effective Date, Licensee will be required to place the Initial Packaging Order on or before the Initial Order Date, and such Initial Packaging Order may be "at-risk" (prior to the receipt of all Licensee Regulatory Approvals).

(iii) As a way of example, if there is no Accutane PAS Rejection and the Initial Order Milestone is achieved on the date that is forty-five days after the ten (10) month anniversary, the Milestone Payments payable pursuant to Sections 3.1(a)(iv), (v), and (vi) shall each be due forty-five days following the time period set forth in each such Section above.

(c) If Licensor fails to achieve the Initial Order Milestone by the eighteen (18) month anniversary of the Effective Date (or, in the event of an Accutane PAS Rejection, by the twenty-four (24) month anniversary of the Effective Date), except if such failure results solely from a Permissible Delay, Licensee shall have the right to terminate this Agreement, upon thirty (30) days' written notice to the Licensor, and Licensor shall refund to Licensee [***] percent ([***]%) of the Upfront Payment promptly, but in any event within thirty (30) Business Days after the effective date of termination.

Section 3.2 Royalty Payments.

(a) In addition to any other amounts due hereunder, subject to the terms and conditions of this Agreement, in consideration of the license provided herein, each Calendar Quarter, the Licensee shall pay to the Licensor non-refundable, non-creditable amounts based upon the cumulative total Net Sales of the Product in the Territory in the Calendar Year to which such Calendar Quarter relates (each a "Royalty Payment"). Each Royalty Payment payable in a Calendar Quarter shall be equal to the sum of (i) and (ii) below:

(i) An amount equal to the product obtained by multiplying:

(A) (1) [***], by

(B) [***]:

Table 3.2(a)(i)	
Amount of incremental cumulative total aggregate Net Sales of the Product in the Territory in the Calendar Year to which the Calendar Quarter relates:	**The percentage rate applicable to such total aggregate Net Sales (but only for that portion of Net Sales within such range) to calculate the Royalty Payment is:**
$[***]– $[***]	[***]%
$[***]– $[***]	[***]%
Greater than $[***]	[***]%

([***]x [***]) x ([***])

(ii) An amount equal to the product obtained by multiplying:

(A) (1) [***] by (2) [***], by

(B) by [***];

([***]) x [***]%

Section 3.3 Payment of Milestone Payments and Royalty Payments.

(a) Each of the Milestone Payments due and payable under Section 3.1 shall be paid by the Licensee to the Licensor promptly (but no more than thirty (30) days) following the occurrence of the corresponding Milestone Event, except that the Milestone Payment due as pursuant to Section 3.1(a)(i) above shall be payable within fifteen (15) days following the Effective Date. The Licensee shall provide notice to the Licensor of the occurrence of the Milestone Event set forth in Section 3.1 prior to, or no later than on, the date of the payment of the corresponding Milestone Payment.

(b) Each of the Royalty Payments due and payable under Section 3.2 shall be paid by the Licensee to the Licensor promptly (but no more than forty-five (45) days) following the end of the Calendar Quarter to which they relate to. The Licensee shall provide a notice to the Licensor prior to, or no later than on, the date such of payment, which notice shall provide sufficient details to permit confirmation by the Licensor of the accuracy of the payments made.

(c) All Royalty Payments and Milestone Payments shall be made by wire transfer of immediately available funds, in United States dollars, to an account designated in writing by the Licensor (such designation to be made at least two (2) Business Days prior to the date on which such payment is due).

Section 3.4 Milestone and Royalty Information, Sales Reports, Audits.

(a) The Licensee shall, and shall cause its Affiliates, and its and their permitted sublicensees to keep reasonable, correct and complete books, records and documents (whether in hardcopy, electronic or other form) substantiating the achievement (or non-achievement) of the Milestone Events and the Net Sales amounts recognized in each Calendar Year for the Product in the Territory, as related to the Royalty Payments and Milestone Events (the " Milestone and Royalty Information") and shall maintain such Milestone and Royalty Information until the third (3rd) year following the end of the Calendar Year to which such Milestone and Royalty Information relates. The

Milestone and Royalty Information shall also include sufficient details and documentation to determine the volume of Product sold to Wholesalers and Specialty Pharmacies and the Net Sales calculations.

(b) During the Term and continuing until the first Calendar Year following the Calendar Year in which the Licensor has received all Milestone Payments and Royalty Payments, the Licensee shall provide the Licensor, (i) on a Calendar Quarterly basis together with the corresponding Royalty Payments, not later than forty-five (45) days after the end of each Calendar Quarter; and (ii) on an annual basis, not later than sixty (60) days after the end of each Calendar Year, the annual Sales Report (the Sales Report due pursuant to (ii) being an "Annual Sales Report"). "Sales Reports" shall mean reasonably detailed quarterly (or annual, as applicable) reports of the aggregate gross sales and aggregate Net Sales of the Product in the Territory including the customer type (i.e. Wholesaler, Specialty Pharmacy), for such Calendar Quarter or Calendar Year, as applicable. All Annual Sales Reports shall also include separate line items for the volume of Product by customer type, as well as the volume of Product sold to each Wholesaler and cumulative sales volume for all Specialty Pharmacies, together with a classification of each customer as a Wholesaler or Specialty Pharmacy. The Annual Sales Reports delivered at the end of each Calendar Year shall also include an annual certification, executed by an officer of the Licensee, certifying the Wholesaler Ratio and that sales of Product by the Licensee, its Affiliates, and its or their permitted sublicensees, if any, did not exceed the Wholesaler Limit (or, in the event that the volume of sales of Product did exceed the Wholesaler Limit, such limit was breached).

(c) During the Term and for a period of two (2) Calendar Years thereafter, the Licensor or an independent certified public accountant selected by Licensor and reasonably acceptable to Licensee (not to be unreasonably withheld), (provided all of such Persons shall be subject to the obligations of confidentiality as set forth herein), if any, shall have reasonable access to, and shall be able to review and audit, once every twelve (12) months upon no less than fifteen (15) days written notice and during normal business hours, the books, records, documents (whether in hardcopy, electronic or other form), personnel, work papers and operations of the Licensee to the extent necessary to permit the Licensor to reasonably verify compliance of Licensee with its obligations under Article III and the Sales Reports. The Licensee agrees to reasonably assist the Licensor (or the independent certified public accountant, as applicable) in connection with the exercise of the audit rights granted by this Section 3.4(c). All expenses and costs associated with the review and audit in this Section 3.4(c) shall be borne solely by the Licensor; provided that in the event that such review and audit results in a finding and determination that a Milestone Payment should have become payable earlier or a Milestone Payment or Royalty Payment payable was not otherwise paid or that the amount paid was lower by more than five percent (5%) than the amount that should have been paid, then the expenses and costs of such review and audit (including reasonable attorney's fees) shall be borne and paid by the Licensee. All amounts due to the Licensor as shown by the audit (that have not been previously paid by the Licensee to the Licensor) shall be paid within thirty (30) days following the receipt by the Licensee of a copy of the final audit report. In the event that the audit uncovers an overpayment by Licensee, Licensor shall promptly credit such amount towards the subsequent Milestone Payment or Royalty Payment payable by Licensee; provided that, in the event that no further payments are payable by Licensee hereunder, Licensor shall promptly refund such overpaid amount to Licensee. Licensee will include in all sublicenses granted with respect to the Product, an audit provision substantially similar to the foregoing requiring such sublicensee to keep full and accurate books and records relating to the Product and granting Licensor the right to audit the accuracy of the information reported by any sublicensee in connection therewith in accordance with terms and conditions substantially similar to those provided in this Section above.

Section 3.5 Financial Reports. During the Term and continuing until all Milestone Payments payable pursuant to Section 3.1(a)(ii) - (vi) have been paid to the Licensor by the Licensee (as adjusted pursuant to Section 3.1(b), as applicable), Licensee shall, no later than sixty (60) days following the end of each Calendar Year, furnish to Licensor unaudited financial statements of the Licensee as of the end of such Calendar Year which shall contain include a balance sheet and related statements of income and cash flows statement prepared in accordance with GAAP.

ARTICLE IV
MANUFACTURE AND SALE OF PRODUCTS

Section 4.1 Manufacture of Products. During the Term, upon receipt of all Licensee Regulatory Approvals and upon the terms and subject to the conditions set forth herein, the Licensee hereby agrees to purchase exclusively from Licensor and the Licensor agrees to supply the Products to Licensee for Commercialization by Licensee in the Territory. The Licensor shall have the right to subcontract its obligations under this Agreement to a Third Party or to any of its Affiliates; provided that, any subcontracting of the Manufacture of the Product shall be in accordance with Section 5.2(d); provided further that, Licensor shall remain primarily responsible for the actions and omissions of its subcontractors, including any subcontractor that performs services on behalf of Licensor pursuant to Section 4.3. All Product to be supplied pursuant to this Agreement shall be in blister packs, without label and without any tradename or trademarks and as further set forth in Schedule 8.1.

Section 4.2 Sale and Distribution. The Licensee will sell the Products only in the Territory and will not directly or indirectly sell or otherwise distribute the Products outside of the Territory. The Licensee shall have the sole and exclusive right to determine all terms and conditions of sale by it of the Products (including, for clarity, pricing), subject to the limitations expressly set forth in this Agreement and applicable Law.

Section 4.3 Packaging and Labeling.

(a) Immediately following execution of this Agreement Licensor shall provide Licensee with a copy of the label for the Licensed Product (the "Licensed Product Labeling"). Licensor is responsible for ensuring that the Licensed Product Labeling is accurate, current and complete (consistent with the Product [***]), and complies with applicable requirements of the FDA (and applicable Governmental Entities), the REMS Program and applicable Governmental Rules. Licensee will be responsible for modifying the Licensed Product Labeling in order to generate the content of the label for the Product, together with any other written or graphic matter contained upon any wrapper, packaging, package insert or outset utilized for the Product (which for clarity, shall include the appropriate Licensee Trademarks and any other prescribing information for the Licensed Product that is required by the FDA (and applicable Governmental Entities) and the REMS Program, in the manner and to the extent specified in the Specifications (collectively, the "Product Labeling", with the content of the Product Labeling that is added and/or modified in any way (including relating to formatting and placement) by Licensee (excluding, for clarity, the unmodified Licensed Product Labeling) being referred to as the "Modified Product Labeling"); provided that, Licensor shall have a reasonable opportunity to review and provide comments on the proposed Product Labeling. Licensee shall not include any information on the Modified Product Labeling that is not approved by the FDA or, solely with respect to Additional Changes, Licensor. The Licensee will be responsible for ensuring the accuracy of all information contained on the Product Labeling and for the compliance of all such labels with applicable Governmental Rules and the REMS Program. Such packaging and labels will be in accordance with the Specifications. Licensor shall promptly inform Licensee of any changes to the Licensed Product Labeling. Upon written notification from Licensor, the Licensee will make any changes to the Product Labeling to conform to the License Product Labeling (as applicable) or as otherwise required by applicable Law, the REMS Program or the FDA, and will consider in good faith making any other changes requested by the Licensor, at the Licensee's sole cost and expense, within a reasonable timeframe to be agreed upon in writing by both Parties. The Licensee will be responsible for preparing (but shall not submit) all regulatory or governmental submissions relating to the Product Labeling (whether for the initial submissions to the Product Labeling or subsequent submissions relating to changes required by Governmental Rules, or by any Governmental Entity or the REMS Program) and the parties will work together to submit any such changes to all applicable Governmental Entities for approval, if required, which filings shall be completed by the Licensor unless otherwise agreed to in writing. At such time that Licensor has established its own internal capabilities to secondary package and label products, if ever, in [***] (the "Licensor Facility"), the Parties shall negotiate in good faith an amendment to this Agreement to take into account such capabilities (which amendment, for clarity, shall contain the following terms: (i) Licensor will provide at the Licensor Facility any secondary packaging, labeling and related services with respect to the Product, with the Supply Price to be negotiated at the time of such amendment, (ii) the Product will be delivered to Licensee as a fully labeled and packaged product that is ready for shipment (the "[***] Finished Product") and (iii) the [***] Finished Product will be delivered CIP US Port (Incoterms 2010)). Additionally, as part of the entry into such amendment, the Parties shall negotiate in good faith the remaining shelf life of the [***] Finished Product at the time of delivery to Licensee

(which for clarity, shall be no less than eighteen (18) months' as of the date of delivery of such [***] Finished Product to Licensee).

(b) In the event that Licensee wishes to make any change to the artwork on the Product Labeling, including color changes or updates to packaging or Licensee Trademarks, etc., in each case, that would require a submission to any Governmental Entity or to the REMS Program (each an "Additional Change"), Licensee shall first discuss such proposed Additional Change with the Licensor. In the event that Licensor agrees to permit any such Additional Change (such permission not to be unreasonably withheld, conditioned or delayed), Licensee shall prepare all submissions and Licensor shall cooperate with Licensee to make any applicable submissions to Governmental Entities and/or REMS Program, provided, that Licensee shall bear all costs and expenses associated with any Additional Change. For clarity, the Licensor may reject in its sole discretion any Additional Change or other change to the Product that is requested by the Licensee.

Section 4.4 Facility Maintenance; Inspection; Reports.

(a) The Licensor shall, at all times, maintain and operate, or cause its contractors to maintain and operate, all facilities where Products are Manufactured, packaged, tested, stored, warehoused or shipped, and implement such quality control procedures, as is reasonably required so as to be able to perform its obligations hereunder in accordance with all applicable Governmental Rules, including without limitation, the cGMP Requirements. Not more than once every twelve (12) months (or more often for follow-up audits or inspections directed at significant or critical quality issues observed during the regular audit or brought to the Licensee's attention through customer complaints or claims or by Governmental Entities), the Licensor shall permit, or cause its contractors to permit, quality assurance representatives of the Licensee or designated third parties to inspect such facilities, operations, documents, and records related to the handling, manufacture, testing, inspection, packaging, storage, disposal and transportation of the Products by the Licensor or the applicable contractor upon reasonable notice (which shall not be less than ten (10) days), during normal business hours and on a confidential basis. The Licensor shall also permit, and cause its contractors to permit, representatives of the FDA to inspect such facilities as requested by the FDA.

(b) The Licensor shall maintain adequate and accurate records consistent with the applicable Specifications, including records covering quality control testing and release of the Products and all other Manufacturing services provided hereunder in compliance with the cGMP Requirements and any other relevant Governmental Rules, at all times during the performance of the Manufacturing services and for three (3) years after the date of Manufacture, or such longer period as required by Governmental Rules.

Section 4.5 Adverse Events. Prior to the first commercial sale of the Product by or on behalf of Licensee, but no later than ninety (90) days after the Effective Date, the Parties shall each assign a representative to negotiate in good faith and agree on a process and procedure for sharing and reporting of adverse event information, which shall be documented in a pharmacovigilance agreement ("Pharmacovigilance Agreement"). The Parties shall execute a Pharmacovigilance Agreement within one hundred twenty (120) days after the commencement of discussions with respect thereto.

Section 4.6 Ownership of Regulatory Approvals; Regulatory Communications.

(a) The Parties acknowledge and agree that, in addition to the Licensee Trademark Submissions, Licensee will be responsible for making, obtaining or filing, the following: (i) obtaining the NDC numbers for all Product to be sold by Licensee, including the drug listing of NDC numbers and annual drug listing of the NDC numbers, (ii) making all filings relating to its promotional materials with the Office Prescription Drug Promotion ("OPDP") and (iii) registering as a "wholesaler" (but not a participant or sponsor) under the REMS Program (collectively, the "Licensee Required Filings"). Following execution of this Agreement, Licensor shall provide Licensee with an authorization letter, to allow Licensee to make all filings relating to its promotional materials with OPDP. Prior to making any submissions to OPDP pursuant to this Section 4.6(a), Licensee shall provide Licensor with a copy of such filings to be made with OPDP and a copy of all such promotional materials at least seven (7) Business Days prior to making such submissions to OPDP. In the event that Licensor raises any objection to or concern with the promotional materials, the Parties shall discuss in good faith and shall work together to reasonably and promptly address such concerns prior to Licensee making such filings with OPDP.

(b) All Regulatory Approvals and Regulatory Documentation relating to the Product, other than the Licensee Trademark Submissions and Licensee Required Filings, shall be owned solely by Licensor, and Licensee shall not have, nor shall it claim, any ownership interest or other right in such Regulatory Approvals and Regulatory Documentation.

(c) **Notwithstanding anything to the contrary provided herein or elsewhere, the Parties expressly agree that Licensee shall not be permitted to make any submissions to any Governmental Entity or changes to any of the Regulatory Documentation without the express prior written consent of the Licensor, except that Licensee shall be responsible for the Licensee Trademark Submissions and Licensee Required Filings. Licensor shall own all Regulatory Documentation except that Licensee shall own the Licensee Trademark Submissions and Licensee Required Filings.**

(d) Licensor shall provide in good faith regular updates to Licensee regarding the status of the [***]-Related Trade Name Submissions and any matters related thereto, including anticipated approval dates (and any changes or updates thereto) and any requests by the FDA for documentation or additional information in connection therewith. Additionally, Licensor shall promptly inform Licensee of any communications from, or material issues raised by, the FDA or other applicable Governmental Entity in connection with the [***]-Related Trade Name Submissions and shall promptly (but in any event within three (3) Business Days) provide Licensee with copies of any correspondence (including emails) relating thereto. With respect to the [***]-Related Trade Name Submissions, Licensor shall discuss such matter with Licensee and consider in good faith Licensee's comments with respect thereto prior to responding to the FDA or other Governmental Entity, as applicable. Upon Licensee's reasonable request, Licensor shall address the various matters set forth in this Section 4.6(d) through a meeting between the Parties (on a monthly basis, or such lesser frequency requested by Licensee). For the avoidance of doubt, Licensor shall not file, or respond to any communications with respect to, any [***]-Related Trade Name Submissions without discussing the content of such submissions or communications, and any proposed responses with respect thereto, with Licensee and addressing in good faith Licensee's concerns or objections with respect to any of the foregoing, provided, that Licensor shall be permitted to make filings or respond to communications with Governmental Entities in the event that the failure to respond would adversely impact the Product [***] in any manner other than with respect to the [***]-Related Trade Name Submissions.

Section 4.7 Licensee Submissions. Subject to the terms and conditions set forth in this Agreement, each of the Parties hereto shall (subject to, and in accordance with, Governmental Rules) cooperate and take such reasonable actions, to make all Licensee Submissions with the goal of obtaining all Licensee Regulatory Approvals. Other than any [***]-Related Trade Name Submissions, REMS Related Approvals, Licensee Trademark Submissions, Licensee Required Filings or Additional Changes, which shall be made in accordance with Sections 2.3(b), 2.3(b), 2.3(a), 4.6(a) and 4.3(b), respectively, to the extent that any other Licensee Submissions (or any other regulatory filings) are required to be made during the Term relating to the Commercialization of the Product in the Territory, Licensee shall be responsible for preparing all such submissions and filings (but shall not make any such submissions) and Licensor shall use Commercially Reasonable Efforts to review and make such filings. Other than as set forth in Sections 2.3(b) and 4.8, all costs and expenses relating to any Licensee Submissions and all other Licensee Regulatory Approvals shall be paid by Licensee upon demand from Licensor.

Section 4.8 REMS Program; REMS Fees.

(a) Licensee acknowledges and agrees that as of the date hereof the Product is the subject of the REMS Program. Each Party agrees that it shall, and shall ensure that its Affiliates (and in the case of Licensee, permitted sublicensees (if any)), comply with all rules, regulations, and laws relating to the REMS Program.

(b) Licensor shall use good faith efforts to request the applicable REMS Program authorities to display the Product on the iPledge website as a distinct product from the [***] Product.

(c) With respect to the Product (but not the [***] Product) and subject to Licensor's confidentiality obligations to any Person relating to the REMS Program, Licensor shall not file, submit or respond to any written communications with respect to, any REMS Related Approvals without providing a copy of such submissions to Licensee reasonably in advance of the proposed submission date, and shall discuss the strategy and content of such submissions or communications and any proposed responses with respect thereto, with Licensee and addressing Licensee's good faith concerns and objections with respect to any of the foregoing; provided that, such submissions and/or communications may be reasonably redacted by Licensor with respect to confidential or proprietary information of Licensor or with respect to any matters to which Licensor has any obligations of confidentiality to another Person.

(d) Licensee shall be responsible for all costs and expenses incurred by Licensee or Licensor associated with updating, amending, printing (or re-printing) or otherwise modifying the documents, materials, websites or other media (in all cases whether in hardcopy, electronic or other form) relating to the REMS Program as a result of the Product or as required for Licensee to Commercialize the Product in the Territory.

(e) Licensee shall be responsible for all REMS Program related fees and expenses, including, without limitation, maintenance fees, operational fees, program fees and expenses, in each case, incurred as a result of inclusion of the Product in the REMS Program, permitting the Licensee to Commercialize the Product in the Territory and to the extent related to sales of the Product in the Territory by or on behalf of Licensee (together with the costs and expenses set forth in Section 4.8(d), collectively, "REMS Fees"). Licensee shall be responsible for, pay and discharge directly any REMS Fees charged to Licensee. To the extent that any REMS Fees relating to the Product are attributable to Licensee and charged to Licensor, Licensee shall promptly reimburse any such REMS Fees in accordance with the invoices associated with such fees. Licensor shall send Licensee an invoice setting forth such REMS Fees, which invoice shall: (i) set forth expenses that are solely attributable to the Product or relating to fees set forth in Section 4.8(d) (collectively, "Product-Only REMS Fees") (which shall (A) not include any expenses attributable to the [***] Product, (B) for all Product-Only REMS Fees, include, to the extent possible, a separate line item for each category of expense (and with respect to all pass-through expenses, include appropriate substantiating documentation for such expense)); and (ii) for all other REMS Fees, (x) include a separate line item for each category of expense and (y) provide a calculation of the pro-rata amount of such expense for which Licensee is responsible (based on a determination of the volume of sales attributable solely to the Product versus the [***] Product) (the "Pro-Rata REMS Fees"). Licensee shall promptly, after receipt of the applicable invoice from Licensor, reimburse any such Pro-Rata REMS Fees and Product-Only REMS Fees. For clarity, following the receipt by Licensor of market share invoices, Licensor shall determine the volume of sales attributable solely to the Product versus the [***] Product. Licensee shall be responsible for the REMS Fees that are attributable to its Product based on volume-based sales, amounts due pursuant to Section 4.8(d), and its pro rata portion of all other REMS Fees (determined by volume) that are attributable to the participation of the Product [***] in the REMS Program. For the avoidance of doubt, Licensee shall not be responsible for any REMS Fees charged to Licensor and attributable to sales of the [***] Product.

(f) Licensee agrees that it shall not Knowingly contact or communicate with any REMS Program members, participants or administrators without the prior written consent of the Licensor with regard to the REMS Program, other than in connection with Licensee's obligations under Section 2.3(b). Licensee acknowledges that it is not a "member" of the REMS Program.

(g) Subject to Licensor's confidentiality obligations to any other Person with respect to the REMS Program, each Party hereto agrees that it shall promptly (but in any event no later than five (5) days after receiving such information) provide the other Party hereto copies of any reports, documents or other information received by such Party from the REMS Program in connection with adverse events, quality complaints or similar matters, in each case, related to the Product. In the event of any conflict between this Section 4.8(g) on the one hand, and either a Quality Agreement or any Pharmacovigilance Agreement on the other, such Quality Agreement or Pharmacovigilance Agreement shall control.

Section 4.9 Regulatory Cooperation. Licensee shall, upon the request of the Licensor, provide any such data in Licensee's actual possession to Licensor that is required to be submitted by Licensor to a Governmental Authority or to the REMS Program. The Licensee shall reasonably cooperate with the Licensor, at Licensor's reasonable request, with respect to any regulatory matters for which the Licensor is responsible in relation to the Licensed Product. Without limiting the foregoing, the Licensee shall cooperate with the Licensor in all matters regarding information requests for a Governmental Entity or REMS Program involving the Licensed Product.

ARTICLE V
FORECASTS, ORDERS AND SHIPMENT

Section 5.1 Forecasts. On or prior to the tenth (10^{th}) Business Day of each Calendar Quarter during the Term, Licensee will provide the Licensor with a non-binding written forecast of estimated quantities of Product that the Licensee anticipates ordering from the Licensor during the next twenty-four (24) month period commencing upon the following Calendar Quarter (the "Forecast"). In order to assist in the planning of production runs for the Products, Licensee will provide an initial Forecast to Licensor within thirty (30) days following the execution of this Agreement (the "Initial Forecast"), which Initial Forecast shall only be effective upon mutual agreement of the Parties (provided that, neither Party may withhold agreement to an Initial Forecast that provides for an order quantity that falls within the range of 150,000 Units to 250,000 Units of Product for the first twelve (12) months of such forecast). The Initial Forecast will be updated on or prior to the tenth (10^{th}) Business Day of each following Calendar Quarter and such updated Forecast in accordance with this Section 5.1 will be promptly delivered to the Licensor by the Licensee. The quantity of Product set forth in the first twelve (12) months of a Forecast for a particular Calendar Year shall not decrease by [***] ([***]%) percent, or increase by more than [***]percent ([***]%), from the original Forecast in which such Calendar Year was first included, unless agreed to in writing by the Parties (the "Annual Variation Limit"). The first three (3) months of each such Forecast (the "Firm Order Period") shall be binding on Licensee. The remaining twenty-one (21) months of each such Forecast shall be non-binding estimates for planning purposes. The Licensee will forecast the volume of Products comprising full batch and in multiples of batch quantities, as such quantities are set forth on Schedule 8.1. Each Forecast will be made by the Licensee in good faith, taking into account reasonable projections of demand for the Products including, without limitation, demand in line with prescription trends, and allowing for reasonable safety stock. The Licensor shall use its Commercially Reasonable Efforts to ensure sufficient manufacturing capacity to meet the Forecast.

Section 5.2 Orders.

(a) The Licensee will place firm purchase orders ("Firm Orders") for Products in writing with a delivery date for such Firm Order of one hundred twenty (120) days after the Purchase Order Date, unless otherwise agreed to by the Parties in writing and except for the Initial Firm Order, which shall be placed in accordance with Section 3.1(b)(ii)(A) and Schedule 5.2(B), or as otherwise agreed to by the Parties. For clarity, notwithstanding anything to the contrary in this Article 5, the Initial Firm Order shall become binding on both Parties only upon receipt of the [***]-Related Trade Name Approval, or earlier as agreed to by the Parties in writing. Without limitation to the terms and conditions relating to each Firm Order, unless otherwise agreed to in writing, Licensee shall not be permitted to place any Firm Orders after the Initial Firm Order until the receipt of the [***]-Related Trade Name Approval, and the delivery date for the Firm Order following the Initial Firm Order shall be at least thirty (30) days following the delivery date of the Initial Firm Order. Each Firm Order will specify the quantity and description of each Product ordered, the requested delivery date (which delivery dates will not be on a Saturday, Sunday or holiday), the delivery address and any special instructions requested; provided that, the quantity of Product ordered pursuant to each Firm Order shall be consistent with the amounts set forth in the Firm Order Period of the most recent Forecast, as further described in Section 5.1. The minimum size of any order placed by the Licensee will be a full batch in accordance with Schedule 8.1 hereto, except with the advance written approval of the Licensor and payment of any additional expenses or fees that are required for split batches. All Firm Orders will be in full batch increments and Licensor shall not be required to produce split batches unless mutually agreed to in writing. The Products set forth in Firm Orders will be delivered to an identified finished packager in accordance with the Firm Order. The date an order will be deemed placed (the "Purchase Order Date") will be the date that the Licensor actually receives the purchase order form. The Licensee will be responsible for any delays arising from any changes requested by Licensee in connection with any Firm Order. Any changes to any Firm Order requested by Licensee will neither reduce nor in any way affect the Minimum Requirement obligations set forth in Section 5.3. Orders will be deemed accepted by the Licensor unless the Licensor provides notification of rejection to the Licensee within ten (10) Business Days of receipt of the Firm Order. In the event that a Firm Order is rejected (it being understood that Licensor may only reject a Firm Order that fails to meet the requirements specified in this Agreement), the Licensor shall provide to Licensee the reasons for rejection in writing and the Licensor and the Licensee will cooperate in good faith to promptly resolve any issues raised by such order. The Licensor shall use Commercially Reasonable Efforts to timely supply any Products in accordance with the resolution of a rejected Firm Order.

(b) The Licensor will supply the Products in accordance with each Firm Order placed pursuant to the terms of this Agreement by the Licensee and accepted by the Licensor including the quantities and delivery dates requested in each Firm Order. Each Firm Order will set forth a delivery date of one hundred twenty (120) days after the date of such order. The Initial Firm Order is set forth in Schedule 5.2(b) hereto. Licensee acknowledges that the lead time for any Firm Order is one hundred twenty (120) days, except for the Initial Firm Order, which shall be placed in accordance with Section 3.1(b)(ii)(A) and Schedule 5.2(B).

(c) Subject to Section 5.1, Licensee may submit Firm Orders for quantities of Product in excess of the Forecast amounts (such excess amounts being "Special Orders"), and shall separately provide notice to Licensor that it would like to place a Special Order. Licensor shall use Commercially Reasonable Efforts to fill such Special Order and shall notify Licensee within ten (10) Business Days after receipt of a Special Order if it expects to be unable to do so. If Licensor is unable to fulfill any Special Order, it shall not be deemed a breach of this Agreement.

(d) Notwithstanding any other provisions to the contrary herein, the Licensor in its sole discretion may supply or cause its Affiliate to supply Licensee with the Products, in the form listed on Schedule 8.1 from a facility retained by the Licensor or any of its Affiliates and approved as a Manufacturing site under the Product [***] (which facilities, as of the Effective Date, are listed on Schedule 5.2(d)), and the Parties shall cooperate with each other, at Licensor's cost, to effectuate any changes to the labeling, packaging or other aspects of the Manufacture of the Product that may be required due to such fulfillment from the alternate Manufacturing site.

(e) Subject to Section 4.3(a), Product supplied by Licensor hereunder shall have at least twenty-one (21) months' remaining shelf life as of the date of delivery of such Product to Licensee. During the Term, Licensor shall reasonably inform Licensee of any changes to the approved shelf life of the Product.

(f) In the event that Licensor manufactures excess Product, without limiting any of Licensee's rights to reject such Product in accordance with Section 7.3, Licensee shall accept delivery of up to [***] ([***]%) of the quantity of Product ordered by Licensee pursuant to Firm Orders placed under Section 5.2.

(g) The terms of this Agreement shall prevail over any conflicting, inconsistent or additional terms set forth in any Firm Order.

(h) Shortfall Event; Alternative Supply.

(i) Notwithstanding any provision herein to the contrary, in the event that Licensor is unable to deliver in accordance with Section 5.4 at least eighty (80%) of the volume quantity of Product set forth in a Firm Order (each a "Shortfall") for three consecutive Firm Orders (the occurrence of the third consecutive Shortfall being a "Shortfall Event") (provided that Replacement Firm Orders shall not count as a Firm Order for the purposes of this Section 5.2(h)), and the Shortfall amount of Finished Product attributable to at least two out of three Firm Orders making up a Shortfall Event is not cured within ninety (90) days of receipt of written notice to Licensor of such Shortfall Event violation (such 90-day period with respect to a given Shortfall, the "Shortfall Cure Period"), then an "Interruption Event" shall be deemed to have occurred. Upon the commencement of any Interruption Event, Licensee, in addition to any other rights and remedies hereunder, shall have the right, in its sole discretion to purchase the Product from a third party supplier ("Secondary Supplier"). Licensee shall be responsible for Product actually delivered pursuant to any Firm Order accepted prior to the occurrence an Interruption Event.

(ii) The replacement of Finished Product pursuant to a Replacement Firm Order in accordance with Section 8.3(c), shall cure of a Shortfall for the Firm Order it relates to in the event that Licensee receives at least one hundred percent (100%) of the Product ordered under the original Firm Order (in the form of Finished Product) during the Shortfall Cure Period. Notwithstanding the foregoing sentences, the Shortfall Cure Period shall not commence until Licensee has issued Replacement Firm Orders to Licensor for Product representing such Shortfalls, provided, however, that if Licensor delivers written notice to Licensee during the Shortfall Cure Period that it will be unable to complete such additional Replacement Firm Orders to Licensor for Product representing such Shortfalls, then the Shortfall Cure Period shall automatically end upon the giving of such written notice. Licensor acknowledges and agrees that Licensee shall have the right to issue Replacement Firm Orders for the quantity of Product representing such Shortfalls (in accordance with Section 8.3(c) (including that such Replacement Firm Orders shall be in full batch increments)) as soon as practicable after delivery of Product pursuant to Section 5.4 until the end of the Order Period. For the avoidance of doubt, Licensee must issue a Replacement Firm Order in accordance with Section 8.3(c)(i) following a Shortfall in order for such Shortfall to be one of the three consecutive Firm Orders that make up a Shortfall Event.

(iii) During any Interruption Event (irrespective of whether Licensee elects to purchase the Product from a Secondary Supplier), Licensee shall be relieved of its obligation to order its purchase requirements of the Product from Licensor until the one hundred twentieth (120th) day (the "Resumption Date", and the period beginning on the expiration of the Shortfall Cure Period and ending on the Resumption Date being the "Interruption Period") following the date that Licensor provides written notice (a "Resumption Notice") to Licensee that it is able to fulfil Firm Orders in accordance with the terms of this Agreement. For clarity, the non-placement of Firm Orders during any Interruption Period shall not be deemed to be a breach of Licensee's obligations under this Agreement. Following a Resumption Date, subject to the remainder of this Section 5.2(h), Licensee shall be required to purchase from Licensor for the remainder of the Term the greater of (i) [***] ([***]%) percent of the total cumulative annual quantities of Product ordered in such Calendar Year from Licensor and any Secondary Supplier and (ii) the Minimum Requirement of Product (subject to Licensee's rights in the event of any subsequent Shortfall Events occurring after the initial Resumption Date, if any, as set forth in this Section 5.2(h), *mutatis mutandis*) (the "Annual Purchase Requirement"). For clarity, the calculation of [***] percent ([***]%) of annual Product volume or the Minimum Requirement of Product, as referenced in the immediately preceding sentence,

shall be made on a pro rata basis for the Calendar Year in which an Interruption Period occurs. By way of example, if Licensee ordered [***]Units of Product for delivery in a given Calendar Year ([***] Units each month), of which [***] Units were delivered from January through April, and May through August constituted an Interruption Period, Licensee would be required to order the following amount of Product for delivery in September through December of such Calendar Year in order to satisfy the Annual Purchase Requirement: the greater of (i) [***]Units (calculated as follows: [***]% of [***]Units - [***]Units already sold = [***] Units remaining for the Calendar Year; [***] Units remaining x (4 months non-Interruption Period / 8 months remaining in Calendar Year = [***]) or (ii) [***] Units (calculated as follows: [***] Units - [***] Units already sold = [***] Units remaining for the Calendar Year; [***] Units remaining x (4 months non-Interruption Period / 8 months remaining in Calendar Year = [***]).

(iv) Notwithstanding Section 2.4, and subject to the terms and conditions set forth below, Licensee shall have the right at any time during the Term to engage a manufacturer to establish and validate such manufacturer as a Secondary Supplier for the Product in the Territory under the Product [***] (and Licensor shall be required to be a party to any such arrangement with a Secondary Supplier). Licensor shall, upon Licensee's reasonable request and at Licensee's sole cost, reasonably cooperate by providing copies of all data, documents, information or other know-how that is reasonably necessary to make or have made Product ("Technology and Manufacturing Information"). Licensor shall not be required to provide any personnel or manufacturing technology transfer other than such Technology and Manufacturing Information referred to in the foregoing sentence; provided that, Licensor shall make itself reasonably available by telephone, video conference and/or e-mail (but not in-person), for a period of ninety (90) days after the completion of the technology transfer in this subsection (iv), to answer Licensee's reasonable questions regarding the transferred know-how (subject to reimbursement by Licensee for Licensor's internal costs incurred in providing such assistance, at pre-agreed personnel rates). As a condition to engaging in any discussions with a potential Secondary Supplier, the Parties and such potential Secondary Supplier shall enter into a tri-partite confidentiality agreement and such Secondary Supplier shall agree not to develop, manufacture, supply or otherwise commercialize a Competitive Product during the Term. Any Secondary Supplier shall not be a Direct Competitor of Licensor. Any filings required to be made to any Governmental Entity relating to a Secondary Supplier shall be prepared by Licensee (but not filed) and subject to review by Licensor, and Licensor shall be permitted to make any changes to such filings as it deems necessary or advisable in its sole discretion. Licensor shall only be required to share Technology and Manufacturing Information with those persons that need to know such information, and shall not be required to disclose any such Technology and Manufacturing Information to any Person (including the Licensee) prior to entering into the tri-partite disclosure agreement. The Parties agree that the Technology and Manufacturing Information is the Confidential Information of Licensor. Only Licensor shall be permitted to make any filings required to be made to any Governmental Entity relating to a Secondary Supplier unless otherwise agreed to in writing. Licensor shall solely own all Regulatory Approvals, Regulatory Documentation and intellectual property (including know-how) relating to or created as a result of the engagement of a Secondary Supplier (which shall exclude such Secondary Supplier's background intellectual property in existence prior to Licensee's engagement of such Secondary Supplier). Secondary Supplier shall only be permitted to supply Product to Licensee or Licensor for sales in the Territory and shall not supply Product outside of the Territory. Licensee shall not have any rights or privileges under this Section 5.2(h)(iv) and shall not contact, engage in any discussions or negotiations with any potential Secondary Supplier until it has provided prior written notice to Licensor (a "Secondary Supplier Election Notice") that has elected to exercise its rights under this Section 5.2(h)(iv).

(v) For the avoidance of doubt, the Parties hereby expressly agree that product supplied by a Secondary Supplier shall be considered "Product" as defined hereunder and subject to the terms and conditions of this Agreement, including with respect to Article III and the payment and calculation of Royalty Payments and Milestone Payments.

(i) The Parties acknowledge and agree that, as of the Effective Date, Licensor intends to Manufacture Product utilizing the batch size set forth in Schedule 8.1. Licensor shall promptly inform Licensee in the event that Licensor intends to change the batch size used to Manufacture Product and shall negotiate in good faith and agree to reasonable amendments to the forecasting and ordering procedures, and related provisions, to account for the changed batch size for Product.

Section 5.3 Minimum Requirement. During each Calendar Year (and pro-rata for the first Calendar Year beginning on the achievement of the Initial Order Milestone and for the final Calendar Year of the Term), Licensee shall "purchase" (as further described in this Section 5.3) at least [***] ([***]) Units of Product from Licensor (the "Minimum Requirement"). For purposes of the Minimum Requirement, the amount "purchased" in a Calendar Year shall be based on the amount ordered in Firm Orders placed for Product with a requested delivery date in the applicable Calendar Year, as long as such requested delivery dates are made pursuant to Sections 5.1, Section 5.2 and Section 5.3. If Licensee does not purchase at least the Minimum Requirement during any Calendar Year, then within forty-five (45) days after the end of such Calendar Year, Licensee shall pay Licensor an amount equal to (1) the difference between (A) [***] Units of Product and (B) the number of Units of Product ordered by Licensee during such Calendar Year (it being understood that the quantity of Product ordered by Licensee may be greater than the quantity delivered by Licensor) (such difference being the "Shortfall Quantity"), multiplied by (2) $[***] per Unit. Licensee shall not be obligated to pay for the Shortfall Quantity to the extent Licensee's failure to meet the Minimum Requirement is due to Licensor's inability to timely supply Licensee with Product in the applicable Calendar Year in accordance with properly placed Firm Orders (including in the event of any Interruption Period) or provided that such inability to timely supply Licensee is not directly caused by Licensee's failure to meet its obligations under this Agreement. At the end of each Calendar Year Licensor shall issue an invoice to Licensee indicating the amount owed by Licensee to Licensor pursuant to this Section 5.3, which amount, if any, shall be due within forty-five (45) days of receipt of such invoice.

Section 5.4 Delivery.

(a) All Products shipped under this Agreement will be shipped CIP US PORT (Incoterms 2010) as bulk product, without any secondary packaging to such location designated by the Licensee in the applicable Firm Order. The Licensor will pay all freight, and insurance charges and Licensee will pay taxes, import and export duties, inspection fees and other charges applicable to the sale and transport of Products purchased by the Licensee. Title and risk of loss and damages to Products purchased by the Licensee will pass to the Licensee upon delivery to the carrier. In the event of damage or loss to the Products after delivery to the carrier, the Licensee will be responsible for filing appropriate claims; provided that, Licensor shall reasonably cooperate with Licensee in filing and receiving reimbursement for such claims. The Licensor shall notify Licensee in writing of the following information concurrently with each shipment of Product: (i) date of shipment, (ii) quantity and type of Product shipped, and (iii) order number or other identifying information.

(b) Licensor shall promptly report to Licensee the occurrence of any event within or beyond its control that is likely to affect delivery of any order of Product, provided that, the giving of such notice shall not otherwise excuse Licensor's performance hereunder.

(c) Licensor shall perform quality assurance testing with respect to the Products sold hereunder, including stability testing, so that the Products conform with the Specifications. With each shipment of Products to Licensee, Licensor shall provide Licensee with a Certificate of Analysis ("COA") and a Certificate of Compliance ("COC") confirming that the Products in such shipment have been tested in accordance with the Product [***] and meet the Product's Specifications. Any deviations and investigations related to such Products shall be completed in compliance with the Product [***], cGMP Requirements and the Quality Agreement.

Section 5.5 Customs Clearance. Licensee shall be responsible for the customs clearance of the Product, and the Parties agree to cooperate with each other including to provide information and documents reasonably requested by the other Party hereto and in such non-requesting Parties' possession relating to the Product (including statement of origin or other customs documentation). Licensee shall not take any actions, or omit to take any actions, to intentionally delay the customs clearance of any Products by Licensee's customs agent (it being understood that Licensee shall have no control over the independent actions or omissions of such customs agent).

ARTICLE VI
REPRESENTATIONS AND WARRANTIES

Section 6.1 Representations and Warranties of the Licensor.

The Licensor hereby represents and warrants to the Licensee as follows:

(a) Product Compliance. All Products delivered pursuant to this Agreement by the Licensor (or any sub-contractor thereof) to the Licensee or its designee during the Term will at shipment be in compliance in all material respects with this Agreement, the Specifications, the Quality Agreement and applicable Governmental Rules, including the cGMP Requirements, and the Manufacturing of such Products will have been in accordance with the cGMP Requirements. Product delivered hereunder will be free and clear of any (i) liens (other than liens entered into in the ordinary course of business or arising as a matter of Law) or (ii) encumbrances that would prevent Licensor from transferring all right, title and interest in the Product to Licensee (e.g., payment obligations to third parties upon sale of the Product), but excluding any encumbrances arising as a result of the status of the Product as a bulk product (e.g., regulatory or quality-related encumbrances). At the time Licensor makes each shipment of Product available for pick-up by Licensee (or Licensee's carrier), the Products shall: (A) not be adulterated or misbranded within the meaning of the FFDCA or within the meaning of any applicable state or municipal law in which the definitions of adulteration and misbranding are substantially the same as those contained in the FFDCA, as such FFDCA and such laws are constituted and in effect at the time of delivery; and (ii) not be an article that may not be introduced into interstate commerce under the provisions of Sections 404 and 505 of the FFDCA.

(b) Authorization. This Agreement has been duly executed and delivered by the Licensor and, assuming due execution and delivery by the Licensee, constitutes a valid and binding obligation, enforceable against the Licensor in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and other laws relating to creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Licensor and its respective officers and directors.

(c) No Other Commercialization Right. As of the Effective Date, Licensor has not granted to any third party, any license to Commercialize the Licensed Product under the Product [***], other than under the trade name [***], in the Territory.

(d) Absence of Conflicts. The execution, delivery and performance of this Agreement by the Licensor does not conflict with or constitute a default under any agreement, instrument or understanding, oral or written to which it is a party or by which it may be bound, does not conflict with any provision of any of its organizational documents and does not conflict with or violate any Governmental Rule or court order or decree.

(e) Organization and Standing. The Licensor is a corporation, duly organized, validly existing and in good standing under the laws of [***].

(f) Power and Authority. The Licensor has the corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

(g) Compliance With Law. Licensor has and will maintain throughout the Term of this Agreement all permits, licenses, registrations and other forms of governmental authorization and approval as required by Law in order for Licensor to execute and deliver this Agreement and to perform its obligations hereunder in accordance with all Governmental Rules.

(h) No Debarment. Licensor is not debarred and has not and will not use in any capacity the services of any person debarred under subsection 306(a) or (b) of the Generic Drug Enforcement Act of 1992. If at any time this representation and warranty is no longer accurate, Licensor shall promptly notify Licensee of such fact.

(i) No Suits. As of the Effective Date, Licensor (i) is not a party to any legal action, suit or proceeding relating to the Licensed Product in the Territory; and (ii) has not received any written communication from any Third Party (including any Governmental Entity) threatening any action, suit or proceeding relating to the Licensed Product in the Territory.

Section 6.2 Representations and Warranties of the Licensee.

The Licensee hereby represents and warrants to the Licensor, as of the Effective Date, as follows:

(a) Authorization. This Agreement has been duly executed and delivered by the Licensee and, assuming due execution and delivery by the Licensor, constitutes a valid and binding obligation, enforceable against the Licensee in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and other laws relating to creditors' rights generally and by general equitable principles. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action on the part of the Licensee and its respective officers and directors.

(b) Absence of Conflicts. The execution, delivery and performance of this Agreement by the Licensee does not conflict with or constitute a default under any agreement, instrument or understanding, oral or written to which it is a party or by which it may be bound, does not conflict with any provision of any organizational documents of the Licensee and does not conflict with or violate any Governmental Rule or court order or decree.

(c) Organization and Standing. The Licensee is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware.

(d) Power and Authority. The Licensee has the corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

(e) Licensee Trademarks. To the best knowledge of the Licensee, the Licensee Trademarks including the trade name set forth on Schedule 2.3(a) does not and will not infringe any intellectual property rights or other proprietary rights of any third party in the Territory and that as of the Effective Date, Licensee (i) is not a party to any lawsuit or proceeding relating to the Licensed Trademarks in the Territory and (ii) has not received any written communication from any Third Party (including any Governmental Entity) threatening any action, suit or proceeding relating to the Licensed Trademarks in the Territory.

(f) Packaging Capabilities. Licensee acknowledges and agrees that Licensor has no obligation to, has made no representation or warranty that it has or will, and makes no assurances that it can or will, establish its own internal capabilities to secondary package and label Product.

(g) High Risk Product. Licensee acknowledges that the Licensed Product is an enhanced/ high risk product and that it is aware of the current and past regulatory and product liability matters relating to Isotretinoin products. Prior to the Effective Date, Licensee has completed its legal and business due diligence relating to the risks to users of the Product and the results thereof are satisfactory to the Licensee in its sole and absolute discretion.

(h) Product Yield. Without limiting any of Licensee's rights under Section 8.3(c), Licensee acknowledges that the output from each full batch size of 4,000 Units will likely be in the range of eighty percent (80%) to one hundred percent (100%) of the batch size and the delivery of Products in such range shall not be deemed a breach of this Agreement.

Section 6.3 **DISCLAIMER. THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE PARTIES' ONLY WARRANTIES AND NO OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WILL APPLY. EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. FOR THE AVOIDANCE OF DOUBT, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF NON-INFRINGEMENT THAT ARE NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.**

ARTICLE VII
QUALITY ASSURANCE

Section 7.1 The Licensor's Covenants.

The Licensor hereby covenants during the Term that it will (and use Commercially Reasonable Efforts to cause its Affiliates, and its or their employees, agents or contractors to):

(a) Manufacture, fill, bulk package (but not secondary or retail package), test, handle, store, warehouse and ship the Products in conformity with this Agreement, Quality Agreement, Governmental Rules, cGMP Requirements and the Specifications;

(b) promptly inform Licensee of any adverse events related to the Products and significant complaints regarding the quality of the Products, and any inspections, communications, or material issues raised by the FDA in connection with the Manufacturing of the Products, and shall provide Licensee with copies of any correspondence (including emails) relating thereto, in accordance with the Pharmacovigilance Agreement entered into between the Parties pursuant to Section 4.5 (but in any event no later than five (5) days after becoming aware of the occurrence of such adverse event);

(c) obtain and maintain all permits reasonably necessary to Manufacture and supply all Product subject to an FDA approved Product [***] in accordance with the Specifications, applicable Governmental Rules and this Agreement;

(d) use Commercially Reasonable Efforts to keep the Product [***] valid, subsisting and in full force and effect;

(e) comply with its obligations set forth in the Quality Agreement with respect to the Product; and

(f) if Licensor becomes aware of any Products that have not been Manufactured in accordance with the Specifications and that have been supplied, promptly take such corrective action as shall be reasonably necessary to correct such nonconformity and inform Licensee in writing.

Section 7.2 The Licensee's Covenants

The Licensee hereby covenants during the Term that it will:

(a) hold, store, handle, ship, deliver, market, distribute and/or sell the Products (i) in accordance with applicable cGMP Requirements and Governmental Rules, including but not limited to any risk management programs required by the FDA (which includes the REMS Program); and (ii) in compliance with the Specifications;

(b) enter into all necessary compliance agreements as may be reasonably designated by the Licensor, including but not limited to agreements to cover quality assurance and adverse incident reporting;

(c) promptly inform Licensor of any adverse events related to the Products and significant complaints regarding the quality of the Products, in accordance with the Pharmacovigilance Agreement entered into between the Parties pursuant to Section 4.5 (but in any event no later than five (5) days after becoming aware of the occurrence of such adverse event); and

(d) comply with its obligations set forth in the Quality Agreement with respect to the Product.

Section 7.3 Rejection of Delivered Products. Within thirty (30) days of receipt of any shipment of Finished Product and applicable COA and COC by the Licensee in accordance with Section 8.3(b), the Licensee will inspect the Finished Product, COA and COC and advise the Licensor of any defect whereby the Finished Product does not conform to the Specifications. Except with respect to any Finished Product containing a hidden defect (that was not otherwise discoverable), any Finished Product not refused within thirty (30) days will be deemed accepted. If the Licensee wishes to refuse acceptance, the Licensee will, within such 30-day period, provide written notice to the Licensor of its refusal to accept the defective Finished Product and the reason(s) therefor. In the event a hidden defect (i.e., one which could not have been reasonably identified during the initial 30-day Licensee inspection period) is discovered at a later date whereby the Finished Product does not conform to the Specifications, the Licensee shall inform the Licensor as soon as Licensee becomes aware of the alleged hidden defect (that was not otherwise discoverable). In the event that the Licensee refuses acceptance or rejects the Finished Product due to a defect discovered within the initial thirty (30) day period after delivery or due to a hidden defect that is subsequently discovered, the Licensor, upon confirmation of the reasons for refusal or rejection of the Finished Product, will replace within ninety (90) days or as soon as reasonably practicable the defective Finished Product at the Licensor's sole cost and expense or refund the Supply Price, at the Licensee's option. If the Licensor and the Licensee do not agree on the refusal or rejection of Finished Products, then either Party may refer the matter for final analysis to a specialized laboratory of national reputation acceptable to both Parties for the purpose of determining the results. Any determination by such laboratory will be final and binding upon the Parties. The cost of any such review by a laboratory shall be borne by the Party

against whom such specialized laboratory rules. Without limiting Licensee's rights under Article 12, except as set out in this Section 7.3 or Section 10.1, the Licensor shall have no liability to Licensee for any defect for which it has not received notice from the Licensee as specified herein.

Section 7.4 Recall. Licensor shall maintain traceability records in accordance with the applicable Governmental Rules, including cGMP Requirements, and in accordance with any written instructions or guidelines provided to Licensor by the Licensee, necessary to permit a recall, field correction or other notification to the field, of the Products. Licensor, in consultation with Licensee, shall have the exclusive right to institute a recall and shall be responsible for managing the recall and communications with customers and Governmental Entities, provided that with respect to Licensee's customers, Licensee shall be responsible for communications (in cooperation with Licensor) and the facilitation of return of Product. The Parties shall cooperate with each other in connection with any such efforts. In the event that any Product is quarantined or recalled, or is subject to stop-sale action, whether voluntary or by governmental action, it is agreed and understood that any expenses, including any out-of-pocket administrative costs and reasonable and documented fees of any experts or attorneys that may be utilized by either Party, government fines or penalties, related to such recall, quarantine or stop-sale, will be borne by the Parties in proportion of the amount of Product sold by each respective Party, unless it is determined that the reason for the quarantine, recall or stop-sale action is the result of the breach by the either Party of its obligations under this Agreement, and in such case such expenses will be borne by such Party in its proportion of fault.

Section 7.5 Quality Procedures. Licensor and Licensee shall comply with the terms of the quality requirements set forth in a quality agreement to be negotiated in good faith by the Parties and entered into by the Parties as soon as practicable after the date hereof, but on or prior to the earlier of the receipt of the Licensee Regulatory Approvals or sixty (60) days after the Effective Date (the "Quality Agreement"). To the extent that any inconsistencies or conflicts exist between the Quality Agreement and this Agreement, the provisions in the Quality Agreement shall prevail solely with respect to quality requirements and compliance with Governmental Rules.

Section 7.6 Regulatory Communications. Licensor shall be responsible for communicating with the FDA regarding the Products and the Manufacturing performed by Licensor hereunder and Licensee shall not, other than in connection with Licensee Trademark Submissions or Licensee Required Filings, initiate contact with any Governmental Entity (including the FDA) regarding the Products or the Manufacturing without Licensor's prior written consent, except when required by the terms of this Agreement or by applicable Governmental Rules. Each Party shall provide reasonable assistance to the other Party upon such Party's reasonable request, and at the requesting Party's sole cost and expense, with respect to such regulatory communications.

ARTICLE VIII
PRICE AND PAYMENTS

Section 8.1 Prices. The prices payable by the Licensee for each of the Products for the first Calendar Year following the Effective Date will be the prices set forth on Schedule 8.1, and thereafter will be adjusted pursuant to Section 8.2(b) (the "Supply Price").

Section 8.2 Adjustment.

(a) Any additional costs that were not included in the computation of the Supply Price based on Section 8.1 above and (i) specifically incurred at the request of Licensee, or otherwise authorized by Licensee (such as stability costs, scale-up expenses, and additional analytical or testing expenses), will be charged at actual cost to the Licensee, (ii) required for the Manufacture of the Product in accordance with the Specifications, where the Specifications have been changed or have been otherwise modified by Licensor in order to enhance the performance, safety or reliability of the Licensed Product shall be shared by the Licensor and the Licensee on a pro rata basis (based on a determination of the volume of sales attributable solely to the Product versus the [***] Product) or (iii) required for the Manufacture of the Product as a result of changes to applicable Law (including cGMP Requirements) or Governmental Rule shall be shared by the Licensor and the Licensee on a pro rata basis (based on a determination of the volume of sales attributable solely to the Product versus the [***] Product). A separate invoice will be issued to Licensee for such costs and/or expenses.

(b) On the first anniversary of the Effective Date and each subsequent annual anniversary of the Effective Date, Licensor shall have the right to increase or decrease the Supply Price of such Product to the extent of any actual increase or decrease in the Manufacturing Costs (and any change in the Supply Price shall be to the extent of such increase or decrease). Upon request, Licensor shall provide Licensee with documented proof of any increase in the corresponding component of Manufacturing Cost.

Section 8.3 Invoices; Adjustment to Invoices.

(a) Invoices. Licensor will send all invoices in respect of any Products to a single address specified in writing by the Licensee to the Licensor following the date that such Products subject to any Firm Order shall have been made available to the Licensee under Section 5.4(a). Payments for Product sold hereunder (as adjusted pursuant to 8.3(b)) will be made by the Licensee to the Licensor within the later to occur of (i) thirty (30) days after the date the Licensee is delivered Finished Product (defined below) as set forth in Section 8.3(b) and (ii) ninety (90) days after the date of the invoice by Licensor in each case, by electronic funds transmission in United States dollars as specified in any invoice, without any offset or deduction of any nature whatsoever. In the event that a payment for Product sold hereunder is disputed in good faith, Licensee shall pay such portion of the payment that is undisputed, and the Parties shall immediately attempt in good faith to resolve such dispute by negotiation and consultation between themselves for a period of thirty (30) days. If the Parties are unable to come to an agreement on such disputed amount each Party shall be free to pursue any and all available remedies at law or in equity. For clarity, notwithstanding anything to the contrary in this Section 8, in the event that (A) the transition services agreement that Licensee enters into with the Person set forth therein on the date hereof with respect to the secondary packaging or labeling of the Product terminates or expires or (B) Licensee enters into an arrangement with a Person other than the Person referred to in "(A)" above for the secondary packaging or labeling of the Product (the first to occur of (A) or (B) above being a "Packager Change"), the Parties shall promptly discuss in good faith and enter into an amendment to this Agreement (and any related agreement between the Parties or their respective Affiliates) to adjust pricing terms, invoicing procedures and related terms, to account for the receipt of bulk Product, without any secondary packaging or labeling, by Licensee.

(b) Adjustment to Invoices. Prior to a Packager Change, with respect to each Firm Order, Licensee shall only be responsible to pay for Product that becomes Finished Product (defined below) and which is delivered to Licensee (delivery shall be deemed to occur when such Finished Product departs the third party packaging facility). Upon delivery of Finished Product to Licensee, Licensee shall deliver a debit note to Licensor for an amount equal (i) to the Product that did not become Finished Product, multiplied by (ii) the applicable Supply Price for such Firm Order.

(c) Replacement.

(i) In the event that Licensor delivers less than eighty (80%) percent of the Product ordered pursuant to an accepted Firm Order (a "Supply Shortage"), then at any time after delivery of Product containing such applicable Supply Shortage pursuant to Section 5.4 until fifteen (15) Business Days after such Finished Product is made available at the third party packaging facility in accordance with Section 8.3(b) (such period, the "Order Period"), Licensee shall have the right to issue a Replacement Firm Order in the amount of such undelivered Product, rounded up such that the Product is only ordered in increments of full batches of Product (with the amount of Product ordered in excess of the undelivered amount deemed "Excess Major Product"). Any Product ordered pursuant to a Replacement Firm Order shall be delivered by Licensor and the relevant secondary packager pursuant to Section 8.3(b), as applicable, as Finished Product within ninety (90) days following the receipt by Licensor of such Replacement Firm Order. The Parties shall cooperate with each other and the relevant secondary packager in the issuing of Replacement Firm Orders and the carrying out of any related obligations necessary to accomplish the foregoing.

(ii) In the event that Licensee receives eighty (80%) percent or more, but less than one hundred percent (100%), of the Product ordered pursuant to a Firm Order (a "Minor Shortage"), then, upon mutual written agreement of both the Licensor and the Licensee, which either Party may reject in their sole discretion, Licensee may request to order one (1) additional full batch of Product (with the amount of Product in such batch that is in excess of the undelivered amount being deemed "Excess Minor Product"; together with Excess Major Product, "Excess Product"). Following such mutual written agreement Licensee shall issue such Replacement Firm Order for one (1) batch of Product (which shall be placed no later than fifteen (15) Business Days following such written mutual agreement), and Licensor and the relevant secondary packager pursuant to Section 8.3(b), as applicable, shall supply such Product as Finished Product as soon as practicable (but no later than ninety (90) days after the receipt by Licensor of such Replacement Firm Order). The Parties shall cooperate with each other and the relevant secondary packager in the issuing of Replacement Firm Orders and such other items necessary to accomplish the foregoing.

(iii) For clarity, the delivery of Excess Product pursuant to Replacement Firm Orders issued pursuant to subsections (i) and (ii) above in a given Calendar Quarter shall not count towards the Annual Variation Limit, or cause Licensee to become in breach of the Annual Variation Limit in such Calendar Year, as described in Section 5.1, if Licensee was not in breach of such requirement prior to such delivery. Licensee shall be required to pay for any Excess Product delivered pursuant to a Replacement Firm Order. The Parties agree to cooperate to issue Replacement Firm Orders or invoices as necessary to accomplish the foregoing in subsections (i) and (ii) above. Notwithstanding the foregoing, the Parties acknowledge any Replacement Firm Order shall only be in full batch increments and Licensor will not be required to provide replacement Product in partial batch increments when replacing Product hereunder.

(iv) Following the successful replacement of any Supply Shortage or Minor Shortage within ninety (90) days after receipt of the relevant Replacement Firm Order by Licensor, such that Product delivered pursuant to a Replacement Firm Order together with the amount delivered pursuant to the original Firm Order results in Licensee receiving 100% of the amount set forth in the original Firm Order to which such Replacement Firm Order relates, Licensor shall have cured any default hereunder solely relating to such shortfall of such applicable Firm Order.

(v) Any Product delivered pursuant to this Section 8.3(c) shall conform to the requirements of Section 5.2(e).

(vi) For the avoidance of doubt, the issuance of a Replacement Firm Order by Licensee shall operate to replace the undelivered quantities in the Firm Order that was the basis for issuing such Replacement Firm Order, and the undelivered quantity of Product in the original Firm Order shall no longer be delivered or deliverable by Licensor other than as expressly set forth in the applicable Replacement Firm Order.

(d) The term "Finished Product" means fully packaged and labeled finished Product, released by the applicable quality teams (as set forth in the quality agreements), at the secondary packager/labeler of the Product.

Section 8.4 Payments; Exchange Rate. All payments hereunder will be made in U.S. Dollars. When conversion of payments from any currency other than Dollars is required, such conversion shall be at the exchange rate published by *The Wall Street Journal, Eastern U.S. Edition*, on the last day of the Calendar Quarter in which the applicable sales were made. Payments made to Licensor will be made to such account as the Licensor will have specified in writing to the Licensee with written confirmation of payment sent by facsimile or email to such address as the Licensor will have specified in writing to the Licensee.

Section 8.5 Taxes, etc. Any tax required to be withheld by a Party on amounts payable under this Agreement will promptly be paid by Licensee on behalf of the Licensor to the appropriate Governmental Entity, and Licensee will furnish Licensor with proof of payment of such tax within fifteen (15) days of payment of such taxes. Any such amounts deducted or withheld by the Licensee shall be treated as having been paid to the Licensor for purposes of this Agreement. Licensor and Licensee shall cooperate with each other and use their commercially reasonable efforts to obtain any certificate or other document from any person as may be necessary to mitigate, reduce or eliminate any such Licensee Taxes. Licensee will take into account the Tax Treaty when determining the rate at which withholding tax will be deducted hereunder. The Parties agree that the maximum withholding tax, as of the Effective Date, is fifteen (15%) percent. Within thirty (30) days of the Effective Date, Licensor shall deliver to Licensee a properly completed Internal Revenue Service Form W-8BEN-E. Notwithstanding anything to the contrary in this Agreement, Licensor shall timely pay and be responsible for (and shall indemnity Licensee for) any transfer, documentary, sales use, stamp, registration, value added, goods and services tax, harmonized sales tax and any provincial sales tax or other similar tax (each an "Indirect Tax") that is imposed with respect to the transactions, payments or the related transfer of rights or other property pursuant to the terms of this Agreement. Licensee shall be entitled to offset any Indirect Taxes borne by it from amounts otherwise owed to Licensor under this Agreement.

Section 8.6 Separate Sale. Each shipment of Product to the Licensee will constitute a separate sale, obligating the Licensee to pay therefor, whether said shipment is in whole or only partial fulfillment of any order or confirmation issued in connection therewith.

ARTICLE IX
TERM AND TERMINATION

Section 9.1 Term. The provisions of this Agreement will commence on the date hereof and will expire on the ten (10) year anniversary of the Effective Date (the "Initial Term") and may be extended upon mutual written agreement of the Parties hereto (the "Extended Term" and together with the Initial Term, the "Term"), unless earlier terminated in accordance with this Article IX.

Section 9.2 Termination.

(a) Either the Licensor, on the one hand, or the Licensee, on the other hand, as applicable, will have the right to terminate this Agreement with immediate effect (except as otherwise stated below) upon written notice to the other upon the occurrence of the following:

(i) the Licensor, on the one hand, or the Licensee, on the other hand, files a petition in bankruptcy, or enters into an agreement with its creditors, or applies for or consents to the appointment of a receiver or trustee, or makes an assignment for the benefit of creditors, or becomes subject to

involuntary proceedings under any bankruptcy or insolvency Law that remains undismissed within ninety (90) days after the filing thereof; or

(ii) the Licensor, on the one hand, or the Licensee, on the other hand, fails to cure any material breach of any of the terms and conditions hereof within the time period specified in any prior written notice (which will be at least sixty (60) days) delivered to the non-compliant Party by the other Party. Notwithstanding the foregoing, if the non-compliant Party disputes in good faith during the applicable initial sixty (60) days cure period the existence or materiality of the alleged breach senior officers of each Party shall attempt in good faith to resolve such dispute by negotiation and consultation between themselves for a period of thirty (30) days which thirty day (30) period shall begin no later than the sixtieth (60^{th}) day following receipt by the non-compliant Party of such written notice of material breach; if the senior officers cannot resolve such dispute within such time period, each Party shall be free to pursue any and all available remedies.

(b) Licensee will have the right to terminate this Agreement:

(i) for any reason or no reason, upon one-hundred twenty (120) days' written notice to Licensor,

(ii) upon thirty (30) days' notice in the event of a failure by Licensor to supply at least eighty (80%) of Product set forth in a Firm Order for four (4) consecutive Firm Orders (except in the case of Force Majeure), provided such Firm Orders are placed and accepted in accordance with Sections 5.2(a), unless such shortfall is cured pursuant to Section 8.3(c), or

(iii) in accordance with Section 3.1(c).

(c) Beginning on the six (6) year anniversary of the Effective Date, if (i) Licensor (or its applicable Affiliate) provides notice to Licensee that it has determined to stop selling the [***] Product in the Territory, or (ii) a material adverse change in the market conditions occurs such that the commercialization opportunity for the Licensed Products substantially decreases (as determined by Licensor in its good faith and after consultation with Licensee), Licensor will have the right to terminate this Agreement, upon three hundred sixty-five (365) days' written notice to Licensee (the "Notice Period"), provided, however, that if Licensor or its Affiliate continues to sell the [***] Product beyond the Notice Period, Licensee shall be permitted to sell the Product for as long as the [***] Product is being sold, provided further, that notwithstanding the foregoing, Licensor's obligation to Manufacture Product shall cease at the end of the Notice Period.

Section 9.3 Effects of Termination.

(a) If this Agreement is terminated pursuant to Section 9.2(a), 9.2(b) or 10.1:

(i) The Licensee acknowledges and agrees that except in the case of termination by Licensor for breach of Licensee in accordance with Section 9.2(a)(ii), or by Licensee pursuant to Section 9.2(b)(iii), upon Licensee's request, the Licensor will be obligated to fulfill all Firm Orders that were accepted prior to the effective date of termination (and placed in accordance with this Agreement), and shall supply any Products ordered by the Licensee pursuant to such accepted Firm Order, and Licensee agrees to pay Licensor the applicable Supply Price for such Products. In addition, the Licensee shall reimburse the Licensor all payments owed for (i) such quantities of components, materials, APIs and work-in-progress in the Licensor's, its Affiliates' and third party manufacturers' possession that were purchased or manufactured for purposes of fulfilling the Firm Order Period of the most recent Forecast and (ii) any additional safety stock of Product or its components held by Licensor pursuant to the terms of this Agreement, in each case of (i) and (ii), that are not reasonably allocable to or usable for other activities being carried out by the Licensor or its Affiliates, which amount shall be payable no later than thirty (30) days after receipt by the Licensee of an invoice setting forth such costs. For clarity, Licensee shall have the right to sell or have sold any Products supplied by Licensor pursuant to this subsection (a) for up to nine (9) months after termination of this Agreement (and the license grant to Licensee under Section 2.1 shall be deemed to be extended accordingly), except in the case of termination of this Agreement for material breach by Licensee or expiration of the Term of this Agreement (which, for clarity, shall exclude early termination of the Agreement). Any Products sold following termination shall remain subject to the terms and conditions of this Agreement, including as related to Milestone Payments and Royalty Payments.

(ii) Notwithstanding anything to the contrary provided herein or elsewhere, if Licensor terminates this Agreement pursuant to Section 9.2(a)(ii) or Licensee terminates this Agreement pursuant to Section 9.2(b)(iii), then Licensor will be entitled to cancel any Firm Order then outstanding and will not be obligated to supply any Products ordered by the Licensee pursuant to such Firm Order. Upon such termination referred to above Licensee shall cease selling Product immediately.

(b) If this Agreement is terminated pursuant to Section 9.2(c), upon receipt by Licensor of a ROFR Election Notice (defined below) in accordance with Section 9.3(b)(i), Licensor shall, and hereby does, grant to Licensee during the Notice Period and for two (2) years thereafter (collectively, the "Offer Period") a right of first refusal to obtain a license under the Product [***] and any other intellectual property rights controlled by Licensor to Commercialize the Licensed Product under a trade name owned by Licensee (including the Licensee Trade Name) or Third Party (which shall not include the [***] Product or the Licensed Product under the trade name [***] or any other [***] Trademark, the "ROFR Product"), in the Territory, on the same terms and conditions as those offered by Licensor to a Third Party (the 'Licensed Product ROFR"), as detailed in this Section 9.3(b).

(i) In the event Licensor (A) intends to grant a Third Party a license under the Product [***] to Commercialize the ROFR Product, or (B) receives a bona fide offer from a Third Party to make, have made or Commercialize the ROFR Product in the Territory (as evidenced in each case of (A) and (B) by a term sheet or substantially equivalent written offer) then prior to entering into a definitive agreement consistent with such terms, Licensor shall promptly deliver to Licensee a written notice ("ROFR Notice") setting forth the terms contained in such offer (without identifying the Third Party), and shall include in such notice any material information or documents (regulatory, technical or otherwise) as reasonably necessary and consistent with the type of information made available to the Third Party relating to such offer for Licensee to evaluate the offer ("License Offer"), and upon Licensee's written request, which shall be delivered to Licensor no later than fifteen (15) days following of Licensee's receipt of the ROFR Notice (a "ROFR Election Notice"), the Parties shall negotiate in good faith a license agreement consistent with such terms set forth in the License Offer.

(ii) If, despite good faith negotiations pursuant to subsection (i) above, the Parties fail to either (A) reach an agreement on material terms (which, for clarity, shall be satisfied by agreement on the material aspects of a term sheet, and shall not require entry into a definitive agreement) within (60) days or (B) enter into a definitive agreement within ninety (90) days, after Licensor delivers the ROFR Notice (or such longer period as agreed by the Parties in writing) (the "License ROFR Period"), then Licensor shall be free to enter into a license with respect to the ROFR Products in the Territory on terms and conditions that are no more favorable to the Third Party, in the aggregate, than the terms and conditions set forth in the License Offer.

(c) If this Agreement is terminated pursuant to Section 9.2(c), upon receipt by Licensor of a ROFR Election Notice in accordance with 9.3(c)(i),

Licensor shall, and hereby does, grant to Licensee for the Offer Period a right of first refusal to acquire the Product [***], on the same terms and conditions as those offered by Licensor to a Third Party (the "Product [***] ROFR"), as detailed in this Section 9.3(c).

(i) In the event Licensor (A) intends to sell, license, assign or otherwise transfer, the Product [***] to a Third Party, or (B) receives a bona fide offer from a Third Party regarding a sale, assignment or other transfer, of the Product [***] to such Third Party (as evidenced in each case of (A) and (B) by a term sheet or substantially equivalent written offer), then prior to entering into a definitive agreement consistent with such terms, Licensor shall promptly deliver to Licensee a ROFR Notice setting forth the terms contained in such offer (without identifying the Third Party), and shall include in such notice any material information or documents (regulatory, technical or otherwise) as reasonably necessary and consistent with the type of information made available to the Third Party relating to such offer for Licensee to evaluate the offer ("Product [***] Offer"), and upon Licensee's delivery to Licensor of a ROFR Election Notice (which shall be a written request be delivered to Licensor no later than fifteen (15) days following of Licensee's receipt of the ROFR Notice), the Parties shall negotiate in good faith an agreement consistent with such terms set forth in the Product [***] Offer.

(ii) If, despite good faith negotiations pursuant to subsection (i) above, the Parties fail to either (A) reach an agreement on material terms (which, for clarity, shall be satisfied by agreement on the material aspects of a term sheet, and shall not require entry into a definitive agreement) with respect to the Product [***] within sixty (60) days or (B) enter into a definitive agreement with respect to the Product [***] within ninety (90) days after Licensor delivers the applicable ROFR Notice (or such longer period as agreed by the Parties in writing) (the "Product [***] ROFR Period"), then Licensor shall be free to sell, assign or otherwise transfer the Product [***] on terms and conditions that are no more favorable to the Third Party, in the aggregate, than the terms and conditions set forth in the Product [***] Offer.

(d) Following (i) termination under Sections 9.2(a) or 9.2(b) (subject to the expiration of any inventory sell-off period, as further described in Section 9.3(a)), (ii) termination under Section 9.2(c) (but only after the expiration of the Offer Period, if the Parties have not reached agreement on material terms or entered into a definitive agreement within the relevant timeframe set forth in Section 9.3(b)(ii) or Section 9.3(c)(ii), as applicable) or (iii) expiration of this Agreement, Licensor shall either at its option or upon request of Licensee, take such actions necessary to deregister or withdraw the Licensee Trade Name as an eligible trade name under the Product [***].

(e) Termination or expiration of this Agreement for any reason will not relieve the Parties of any obligation accruing prior to such termination or expiration (including in respect of any Firm Orders). The rights and obligations of the Parties under Sections 2.5 (solely for the period specified therein), 3.4(b) (solely for the period specified therein), 3.4(c) (solely for the period specified therein), 4.4, 4.8(g), 6.3, 7.4, 7.5, 8.4, 8.5, 9.3, 13.1 (solely with respect to the last sentence thereof) and 13.2 (solely with respect to the last sentence thereof) and Article XI, Article XII and Article XIV of this Agreement, and any other provision of the Agreement (including any Exhibit or Schedule) necessary to effectuate the intent of the foregoing, will survive the expiration or termination of this Agreement.

(f) In the event of termination of this Agreement for any reason other than pursuant to a termination by Licensee pursuant to Section 9.2(b)(iii), all Milestone Payments pursuant to Section 3.1(a)(i)-(vi) that have not been paid (whether payable or not payable) as of such termination date shall immediately become due and payable and shall be paid to Licensor within fifteen (15) days of such termination.

ARTICLE X
FORCE MAJEURE

Section 10.1 Force Majeure. Neither Party will be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term or provision of this Agreement (other than the payment of money) to the extent such failure or delay will be caused (directly or indirectly) by a circumstance beyond the reasonable control of the affected Party, including, without limitation, (a) fire, flood, epidemic, pandemic, accident, explosion, terrorism, sabotage, strike, or any labor disturbance (regardless of the reasonableness of the demands of labor); civil commotions; riots; invasions; wars (present or future); acts, restraints, requisitions, regulations, or directions of any Governmental Entity, except where such acts, restraints, requisitions, regulations or directions are the result of a Party's violation of Government Rule; (b) voluntary or mandatory compliance by the Licensor with any request for material represented to be for purposes of (directly or indirectly) producing articles for national defense or national defense facilities; (c) shortage of labor, fuel, power, or raw materials, inability to obtain supplies, failures of normal sources of supplies, or inability to obtain or delays of transportation facilities, in all cases of this subsection (c), as a result of one of one or more the events described in subsections (a) or (b), or a circumstance beyond the reasonable control of the affected Party; or (d) any act of God (each a "Force Majeure"). Any Party asserting its inability to perform any obligation hereunder for any such contingency shall promptly notify the other Party of the existence of any such contingency and shall use Commercially Reasonable Efforts to mitigate such contingency and re-commence its performance of such obligation as soon as commercially practicable. Subject to this Section 10.1, if the Licensor is unable to supply the Licensee with its requirements of Products by reason of Force Majeure, Force Majeure shall excuse the Licensor's performance until the Force Majeure has ceased and for a reasonable period of time thereafter, to allow the Licensor to restore itself to the position it was in with respect to the Products immediately prior to the Force Majeure; provided that, commencing upon the date of receipt of such notification from Licensor, Licensee shall no longer be bound by the exclusivity provisions in Section 2.5 and the provisions of Section 5.2(h) shall thereafter apply, *mutatis mutandis*. The Parties acknowledge and agree that in respect of any Firm Orders for the Products the delivery of which was during such Force Majeure period, the Parties shall discuss in good faith the requirements of Licensee and delivery of such Products. Neither Party shall suffer penalty or incur any liability for its inability to perform hereunder by reason of Force Majeure. If a Party fails to perform any of its obligations under this Agreement by reason of Force Majeure and such non-performance continues for a period of one hundred and twenty (120) days from the first occurrence of the event of Force Majeure, the other Party may terminate this Agreement by providing written notice to that effect to the non-performing Party, and the effects of termination set forth in Section 9.3(a) shall thereafter apply.

ARTICLE XI
CONFIDENTIALITY

Section 11.1 Non-disclosure and Non-use Obligation. Each Party or its Affiliates may, from time to time, prior to or after the date hereof, disclose to the other Party or its Affiliates under this Agreement, Confidential Information (defined below). Each Party (the "receiving Party") agrees that it will not, and will cause its Affiliates, and will cause its or their employees, agents, contractors or sublicensees (collectively, "Representatives"), not to, use for any purpose other than as necessary to perform its obligations or exercise its rights under this Agreement, and will not disclose to anyone in any manner whatsoever, any Confidential Information of the other Party (the "disclosing Party"), including, without limitation, information relating in any way to the products, processes, and services of the disclosing Party or its Representatives, which becomes known to the receiving Party on or prior to the date of the termination or expiration of this Agreement. The obligations of this Section 11.1 will not apply to information that the receiving Party can demonstrate: (i) is rightfully known to the receiving Party as shown by written records prior to its disclosure by the disclosing Party or

its Representatives; (ii) that becomes public information or is generally available to the public other than by an unauthorized act or omission of the disclosing Party or its Affiliates or its or their Representatives; or (iii) that is received by the receiving Party from Third Parties who are in rightful possession of such information and who are lawfully entitled to disclose such information and did not receive such information from the disclosing Party or its Affiliates or its or their Representatives. For clarity, the existence of and terms of this Agreement shall be deemed the Confidential Information of both Parties and may not be disclosed to any other Party without the prior express written consent of the other Party hereto (not to be unreasonably withheld). The term "Confidential Information" means any technical, business or other information provided by or on behalf of the disclosing Party to the other Party or its Affiliates in connection with this Agreement, whether prior to, on or after the Effective Date, including information relating to and the terms of this Agreement, information relating to the Licensed Product (including the Regulatory Documentation), or the scientific, regulatory or business affairs or other activities of either Party, including trade secrets.

Section 11.2 Effects of Termination. Upon the termination or expiration of this Agreement, each Party will return to the other Party (or, at such other Party's request, destroy) (with written confirmation thereof) all documents that include Confidential Information of the other Party or its Affiliates, or its or their Representatives, including all copies of such documents or extracts therefrom, if any, and will make no further use of such information; provided that, each Party will be entitled to keep one (1) copy of such Confidential Information in its legal files solely for the purpose of enabling it to comply with the provisions of this Agreement, or as required by applicable Law.

Section 11.3 Authorized Disclosures. Notwithstanding the obligations set forth in Section 11.1, the receiving Party may disclose Confidential Information of the disclosing Party to the extent such disclosure is reasonably necessary in the following instances:

(a) complying with a lawfully issued governmental order or any other requirement of applicable Law to produce or disclose Confidential Information of the other Party; provided that the receiving Party shall have complied with the requirements of this Section 11.1. With respect to any such governmental order or requirement of applicable Law, the receiving Party shall first notify the disclosing Party of such order or requirement of applicable Law so that the disclosing Party may seek to quash such order or to obtain an appropriate protective order requiring that the Confidential Information that is the subject of such order or requirement of applicable Law be held in confidence or, if disclosed, be used only for the purposes for which such order was issued or such requirement of applicable Law covers. The receiving Party shall reasonably cooperate with the disclosing Party in any such proceeding. With respect to any such order that is not quashed or any other requirement of applicable Law to disclose Confidential Information of the disclosing Party (which shall include any requirement of the disclosing Party to file this Agreement with the Securities Exchange Commission or any other Governmental Entity), the receiving Party shall first notify the disclosing Party in writing and shall provide the other Party with at least five (5) Business Days to request redactions thereof prior to making such filing or disclosure and the Parties shall use commercially reasonable efforts to procure confidential treatment of the Agreement or relevant provisions thereof, at the disclosing Party's reasonable cost; provided, further, that the receiving Party shall furnish only that portion of such Confidential Information that the receiving Party is advised by counsel is legally required to be disclosed. Notwithstanding the foregoing, for clarity, the Parties agree that each Party shall seek confidential treatment of Exhibit A, A-1 and A-2, which shall be at the disclosing Party's cost and expense.

(b) to (i) the receiving Party's (or its Affiliates') Representatives, directors, consultants, attorneys, independent accountants or financial advisors who, in each case, have a need to know such Confidential Information in order for the receiving Party to exercise its rights or perform its obligations under this Agreement, or (ii) to actual or potential investors, investment bankers, lenders, other financing sources or acquirors in connection with potential investment, acquisition, collaboration, merger, public offering, due diligence or similar investigations or in confidential financing documents, provided that, in each case, that any such person is bound by legally enforceable obligations of confidentiality and non-use consistent with the terms hereof. Notwithstanding the foregoing, (A) Licensee shall not disclose to any Persons set forth in subsection (ii) above any information disclosed or made available pursuant to Section 5.2(h)(iv) or relating to the customers, manufacturing costs, volume of sales or market share of Licensor; and (B) Licensor shall not disclose to any Persons set forth in subsection (ii) above any information disclosed or made available pursuant to Section 3.4, or relating to the customers, volume of sales or market share of Licensee.

Section 11.4 Public Announcements. Each Party shall have the right to make a public announcement, press release or other public disclosure of the subject matter of this Agreement; provided that, such Party making such public announcement, press release or other public disclosure shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval. Each Party shall provide its comments, if any, within five (5) Business Days after receiving the other Party's proposed announcement for review. If either Party desires to make a subsequent public announcement, press release or other public disclosure concerning the subject matter of this Agreement or any activities hereunder, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval, except that in the case of a press release or governmental filing required by applicable Law, the disclosing Party shall provide the other Party with such advance notice as it reasonably can and shall use reasonable good faith efforts to consult with the other party prior to the issuance of any public announcement, release or disclosure. Each such public disclosure shall contain appropriate references to the other Party if so requested. A Party commenting on such a proposed disclosure shall provide its comments, if any, within five (5) Business Days after receiving the proposed disclosure for review. With respect to any disclosures required by Law, neither Party shall be required to seek the permission of the other Party to repeat any information that has already been publicly disclosed by such Party, or by the other Party, in accordance with this Section 11.4. Neither Party shall issue a press release or other public announcement relating to this Agreement without the other Party's prior written consent, except as permitted pursuant to this Section 11.4. Notwithstanding the above, if required by Law or if it is Licensor's customary practice to list the Product on its website, Licensor may disclose on its website that the other Party is the exclusive commercial partner of such Party with respect to the Product and may use the other Party's approved name and logo in conjunction with such disclosure. Except as set forth in the immediately preceding sentence, each Party shall be required to obtain the written approval of the other Party (not to be unreasonably withheld or delayed) prior to using the other Party's name, logo or similar identifiers, or to otherwise reference the other Party's Licensed Product in any way, in each case, in any of its marketing materials or on its website. Notwithstanding the foregoing, Licensee hereby acknowledges and agrees that [***].

Section 11.5 Equitable Relief. Each Party acknowledges that its breach of this Article XI may cause irreparable harm to the other Party, which cannot be reasonably or adequately compensated in damages in an action at law. By reasons thereof, each Party agrees that the other Party shall be entitled, in addition to any other remedies it may have under this Agreement or otherwise, to preliminary and permanent injunctive and other equitable relief to prevent or curtail any actual or threatened breach of the obligations relating to Confidential Information set forth in this Article XI by the other Party.

ARTICLE XII
INDEMNIFICATION

Section 12.1 By the Licensor. From and after the Effective Date, the Licensor will indemnify, defend and hold harmless, and pay and reimburse, the Licensee and its Affiliates and their respective officers, directors, Representatives, advisors and shareholders (the "Licensee Indemnitees") from and against any and all losses, damages, liabilities, expenses and costs, taxes (including penalties and interest), including reasonable legal expense and attorneys' fees (collectively, "Losses") resulting from any claim by a Third Party to the extent and only to the extent attributable to: (i) the Licensor's or any Licensor Indemnitee's gross negligence, willful misconduct or breach of any of its representations and warranties, covenants, agreements or obligations contained in this Agreement; (ii) any manufacture or commercialization of the [***] Product conducted by or on behalf of Licensor prior to or after the Effective Date (including, for clarity, any intellectual property infringement claims arising therefrom); or (iii) any intellectual property infringement claims arising from Licensor's Manufacture of the Product; except in each case of (i)-(iii), to the extent such claim arises from a circumstance for which Licensee is obligated to indemnify Licensor pursuant to Section 12.2.

Section 12.2 By the Licensee. From and after the Effective Date, the Licensee will indemnify, defend and hold harmless, and pay and reimburse, the Licensor and its Affiliates and their respective officers, directors, Representatives, advisors and shareholders (the "Licensor Indemnitees") from and against any and all Losses resulting from any claim by a Third Party to the extent and only to the extent attributable to: (i) the Licensee's or any Licensee Indemnitee's gross negligence, willful misconduct or breach of any of its representations and warranties, covenants, agreements or obligations contained in this Agreement; (ii) intellectual property infringement claims relating to any Licensee Trademarks; (iii) the content of the Modified Product Labeling; (iv) the sale of any Product by Licensee or its Affiliates from and after the Effective Date or (v) the registration or association of the trade name Accutane with the Licensed Product or the sale by any other Person of any products under the trade name/ name Accutane (or containing the name Accutane) prior to the Effective Date, which shall include, but not be limited to, any Third Party claims or Losses attributable to any products sold under the name Accutane regardless of the Person that sold such product, except in each case of (i)-(v), to the extent such claim arises from a circumstance for which Licensor is obligated to indemnify Licensee pursuant to Section 12.1.

Section 12.3 Procedures. If Licensee, Licensor or their respective Affiliates (in each case an "Indemnified Party"), receive any written claim which such Indemnified Party believes is the subject of indemnity hereunder by another Party hereto (an "Indemnifying Party"), the Indemnified Party shall, as soon as reasonably practicable after forming such belief, give notice thereof to the Indemnifying Party, provided that the failure to give timely notice to the Indemnifying Party as contemplated hereby shall not release the Indemnifying Party from any liability to the Indemnified Party unless the Indemnifying Party demonstrates that the defense of such claim is materially prejudiced by such failure. The Indemnifying Party shall have the right, by prompt written notice to the Indemnified Party to assume the defense of such claim at its cost, with counsel reasonably satisfactory to the Indemnified Party, provided, however, that Licensor shall assume the defense of any claims of patent infringement related to the Licensed Products. If the Indemnifying Party does not so assume the defense of such claim or, having done so, does not diligently pursue such defense, the Indemnified Party may assume the defense, with counsel of its choice, but at the cost of the Indemnifying Party. If the Indemnifying Party so assumes the defense, it shall have absolute control of the litigation; provided that the Indemnified Party may, nevertheless, participate therein through counsel of its choice and at its cost. The involved Party not assuming the defense of any such claim shall render all reasonable assistance to the Party assuming such defense, and out-of-pocket costs of such assistance shall be for the account of the Indemnifying Party. No such claim shall be settled other than by the Party defending the same, and then only with the consent of the other Party, which consent shall not be unreasonably withheld; provided that the Indemnified Party shall have no obligation to consent to any settlement of any such claim which (i) imposes on the Indemnified Party any liability or obligation which cannot be assumed or performed in full by the Indemnifying Party, (ii) does not unconditionally release the Indemnified Party, (iii) requires a statement as to or an admission of fault, culpability or failure to act by or on behalf of Indemnified Party or (iv) imposes any restrictions on the conduct of business by the Indemnified Party.

Section 12.4 Insurance. At all times from the Effective Date through the termination or expiration of this Agreement (and solely with respect to product liability insurance, for three (3) years after such termination or expiration), each of the Licensee and the Licensor will maintain general liability insurance in the amount of not less than USD $5,000,000 per occurrence and USD $5,000,000 in aggregate and product liability insurance (or self-insurance), which is reasonable and customary in the USA pharmaceutical industry for companies of comparable size, provided that in no event shall the product liability insurance amounts be less than USD $5,000,000 per occurrence and USD $5,000,000 in the aggregate limit of liability per year. Notwithstanding the foregoing, Licensee shall not be required to obtain product liability insurance until all Licensee Regulatory Approvals have been obtained. Each of the Licensee and the Licensor shall add the other Party as additional insured in their general liability and product liability policy and provide written proof of such insurance to the other Party upon request.

Section 12.5 Product Liability. Neither the Licensor nor any of its Affiliates shall have any liability arising out of any injury to any individuals or property as a result of the ownership, possession, or use of any Product manufactured, sold, leased, or delivered by Licensor, and Licensee shall be solely responsible for any liabilities arising out of any injury to any individuals or property with respect to the Products, in each case, except to the extent such liability arises from a manufacturing defect which was not detectable by Licensee. Each Party agrees to take reasonable measures to mitigate such product liability and shall reasonably cooperate with the other Party in doing so.

Section 12.6 Limitations.

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE BY REASON OF ANY BREACH OF ANY REPRESENTATION, WARRANTY, CONDITION OR OTHER TERM OF THIS AGREEMENT OR ANY DUTY OF COMMON LAW, FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL OR PUNITIVE LOSS OR DAMAGE (WHETHER FOR LOSS OF CURRENT OR FUTURE PROFITS, LOSS OF ENTERPRISE VALUE OR OTHERWISE) AND EACH PARTY AGREES THAT IT SHALL NOT MAKE ANY SUCH CLAIM; PROVIDED, HOWEVER, THAT THE FOREGOING DOES NOT LIMIT ANY OF THE OBLIGATIONS OR LIABILITY OF EITHER PARTY OR ITS AFFILIATES UNDER SECTIONS 12.1 AND 12.2 WITH RESPECT TO CLAIMS OF UNRELATED THIRD PARTIES OR LIABILITY ARISING FROM FRAUD OR WILLFUL MISCONDUCT OF A PARTY OR ITS AFFILIATES OR CONTRACTORS, OR DAMAGES ARISING FROM A BREACH OF CONFIDENTIALITY UNDER SECTION 11.

(b) Notwithstanding any other provision of this Agreement, in the event that the Licensee asserts or claims that the Licensor has breached any of its obligations hereunder, the Licensor's maximum liability under or in connection with such claim herein shall be limited to the repayment of (i) [***] and (ii) [***] ([***]%) (except that if such obligation of Licensor to indemnify Licensee hereunder is due to a manufacturing defect caused by Licensor that results in personal injury or death to a user, in such event the cap shall be [***] ([***]%) percent) of the [***]; provided, however, that the foregoing shall not limit any liability arising from a breach of Article XI, intentional fraud, gross negligence or willful misconduct of Licensor or its Affiliates or its or their employees, agents or contractors.

(c) The Parties expressly agree, that notwithstanding anything to the contrary provided herein or elsewhere, Licensor shall not be responsible for and shall not be required to indemnify or repay Licensee for any Inability to Supply Charges.

ARTICLE XIII
INTELLECTUAL PROPERTY RIGHTS

Section 13.1 License from Licensee. The Licensee hereby grants to the Licensor (and its Affiliates and its and their Representatives) for the Term of this Agreement, a royalty-free, non-exclusive, non-transferable, right and license under the Licensee Trademarks, to the extent necessary to carry out Licensor's obligations under this Agreement; provided, however that nothing herein contained shall give or be deemed to give or shall be intended to give the Licensor any right, title, interest or claim in or to the Licensee Trademarks. Licensor agrees that any goodwill associated with its, its Affiliates or their respective Representatives' use of the Licensee Trademarks shall inure solely to the benefit of Licensee.

Section 13.2 License from [***]. In the event that any trade names ([***]), corporate names or the like owned, licensed or controlled by [***] or any of its Affiliates is required by applicable Law to be used in the Product Labeling (collectively, the "[***] Trade Names"), Licensor hereby grants to Licensee (and its Affiliates and its and their Representatives) for the Term of this Agreement, a royalty-free, non-exclusive, non-transferable, right and license under the [***] Trade Names, solely to the extent necessary to carry out Licensee's obligations under this Agreement; provided, however that nothing herein contained shall give or be deemed to give or shall be intended to give the Licensee any right, title, interest or claim in or to the [***] Trade Names. Licensee agrees that any goodwill associated with its, its Affiliates or their respective

Representatives' use of the [***] Trade Names shall inure solely to the benefit of Licensor.

ARTICLE XIV
MISCELLANEOUS

Section 14.1 Assignment.

(a) Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party (not to be unreasonably withheld, conditioned or delayed); provided, however, that after the Effective Date Licensor may assign its rights and obligations under this Agreement, without the prior written consent of the Licensee, to an Affiliate or in connection with a Change of Control of Licensor or the sale of the Licensed Product or all or substantially all of the assets relating to the Licensed Product.

(b) Notwithstanding the foregoing, after the Effective Date and upon at least fifteen (15) Business Day prior notice, Licensee may assign its rights and obligations under this Agreement, without the prior written consent of the Licensor, to an Affiliate of Licensee or in connection with a Change of Control of Licensee, provided that:

(i) Licensee may not assign any rights or obligations to a Direct Competitor without the prior written consent of Licensor (which consent shall be within Licensor's sole discretion);

(ii) Upon or at any time following an assignment in connection with a Change of Control of Licensee, upon notice by Licensor, (A) the "Wholesaler Limit" shall automatically reduce to fifteen (15%) percent and the references in Section 2.2 to "twenty-five (25%) percent" and "thirty (30%) percent" shall automatically be updated to read "fifteen (15%) percent" and "twenty (20%) percent", respectively; and (B) Section 5.2(h) shall be deleted from this Agreement in its entirety, provided that if a Secondary Supplier is qualified or in the process of being qualified under the Product [***], Licensor shall have the sole right to terminate such Secondary Supplier and withdraw such Secondary Supplier from the Product [***].

(c) As a condition to any assignment by Licensee, Licensee shall pay Licensor any remaining unpaid Milestone Payments pursuant to Section 3.1(a)(i)-(vi) that have not been paid, whether payable or not payable, prior to any such assignment hereof. Any permitted assignee or successor-in-interest will assume all obligations of its assignor under this Agreement.

(d) No assignment will relieve either Party of its responsibility for the performance of any obligation. Any permitted assignee shall assume all obligations of its assignor under this Agreement in writing. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Any attempted assignment in violation of this Agreement shall be void *ab initio.*

Section 14.2 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable by any Law or public policy, the remaining provisions of this Agreement will nevertheless remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom as long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties will negotiate reasonably and in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

Section 14.3 Notices. All notices and other communications required or permitted to be given or made pursuant to this Agreement shall be in writing signed by the sender and shall be deemed duly given (a) on the date delivered, if personally delivered, (b) the date of transmission, if such notice or communication is delivered via email (with return receipt), (c) on the date sent by telecopier with automatic confirmation by the transmitting machine showing the proper number of pages were transmitted without error, (d) on the Business Day after being sent by Federal Express or another recognized overnight mail service which utilizes a written form of receipt for next day or next Business Day delivery or (e) two (2) Business Days after mailing, if mailed by United States postage-prepaid certified or registered mail, return receipt requested, in each case addressed to the applicable Party at the address set forth below; provided that a Party may change its address for receiving notice by the proper giving of notice hereunder:

(a) if to the Licensee, to:

Journey Medical Corporation
9237 East Via De Ventura Blvd., Suite 105
Scottsdale, AZ 85258, USA
Attn: President & CEO
E-mail: cmaraoui@jmcderm.com

[***]

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

Journey Medical Corporation
2 Gansevoort Street, 9th Floor
New York, NY 10014
Attn: General Counsel
E-mail: SBerry@fortressbiotech.com

(b) if to the Licensor, to:

[***]

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

[***]

And

[***]

It is understood and agreed that ordinary course business communications necessary between the Parties in performing their duties, in due course, under the terms of this Agreement, including the placement of orders and the delivery of Forecasts, may be delivered by e-mail (with return receipt requested).

Section 14.4 Governing Law. This Agreement and its negotiation, execution, performance or non-performance, interpretation, termination, construction and all claims or causes of action (whether in contract, in tort, at Law or otherwise) that may be based upon, arise out of, or relate to this Agreement, or the transactions contemplated hereby (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in connection with this Agreement or as an inducement to enter this Agreement), shall be exclusively governed by, and construed in accordance with, the Laws of the State of New York regardless of Laws that might otherwise govern under any applicable conflict of laws principles.

Section 14.5 Jurisdiction, Venue, Service of Process, WAIVER OF JURY TRIAL

(a) Any legal proceeding based upon, arising out of, or related to this Agreement and its negotiation, execution, performance, non-performance, interpretation, termination, construction or the transactions contemplated hereby (a "Legal Proceeding") shall be heard and determined in the courts in the County of New York in the State of New York. The Parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Legal Proceeding and irrevocably and unconditionally waive the defense of an inconvenient forum, or lack of jurisdiction to the maintenance of any such Legal Proceeding. The consents to jurisdiction and venue set forth herein shall not constitute general consents to service of process in the State of New York and shall have no effect for any purpose except as provided in this Section 14.5 and shall not be deemed to confer rights on any Person other than the Parties hereto. Each Party hereto agrees that the service of process upon such Party in any Legal Proceeding arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 14.3. Each of the Parties also agrees that any final, non-appealable judgment against a Party in connection with any Legal Proceeding arising out of or relating to this Agreement shall be conclusive and binding on such Party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such award or judgment shall be conclusive evidence of the fact and amount of such award or judgment.

(b) THE LICENSOR AND THE LICENSEE HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

Section 14.6 Entire Agreement. This Agreement and the attached Exhibits and Schedules, constitute the entire agreement between the Parties with respect to the subject matter hereof and all prior agreements with respect hereto are superseded. Each Party confirms that no representations, warranties, covenants or understandings of any kind, nature or description whatsoever are being made or relied upon by any Party, except such as are as specifically set forth herein. No amendment or modifications hereof will be binding upon the Parties unless set forth in a writing specified to be an explicit amendment to this Agreement duly executed by authorized representatives of each of the Parties. The Parties recognize that, during the Term of this Agreement, a purchase order, acknowledgement form or similar routine document (collectively "Forms") may be used to implement or administer provisions of this Agreement. Therefore, the Parties agree that the terms of this Agreement, as it may be amended, will prevail in the event of any conflict between this Agreement and the printed provision of such Forms, or typed provisions of Forms that add to, vary, modify or are in conflict with the provisions of this Agreement with respect to the Products sold during the Term of this Agreement.

Section 14.7 Headings; Interpretation. The headings used in this Agreement are intended for convenience only and will not be considered part of the written understanding among the Parties and will not affect the construction of this Agreement. Except where the context expressly states otherwise, any use of the term "days" in this Agreement shall be deemed to mean calendar days and to the extent a deadline measured in calendar days falls on day other than a Business Day, the next Business Day shall be the applicable deadline.

Section 14.8 Independent Contractors. It is expressly agreed that the Licensor, on the one hand, and the Licensee, on the other hand, will be independent contractors and that neither the relationship among the Parties nor this Agreement will be construed as creating a partnership, joint venture or agency. Neither the Licensor, on the one hand, nor the Licensee, on the other hand, will have the authority to make any statements, representations or commitments of any kind, or to take any action or to incur any liability or obligation which will be binding on the other, without the prior consent of the other Party to do so. All persons employed by a Party will be employees of such Party and not of the other Party and all costs and obligations incurred by reason of any such employment will be for the account and expense of such Party. The Parties (and any successor, assignee, transferee, or Affiliate of a Party) shall not treat or report the relationship between the Parties arising under this Agreement as a partnership for United States tax purposes, without the prior written consent of the other Party unless required by Law.

Section 14.9 Waiver. The waiver by either Party of any right hereunder or the failure to perform or of a breach by the other Party will not be deemed a waiver of any other right hereunder or of any other or subsequent breach or failure by said other Party whether of a similar nature or otherwise.

Section 14.10 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

Section 14.11 Performance by Affiliates. Each Party may perform some or all of its obligations under this Agreement through its Affiliates, provided, however, that such Party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance.

Section 14.12 No Benefit to Third Parties. The representations, warranties, covenants and agreements set forth in this Agreement are for the sole benefit of the Parties and their successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any person or entity any legal or equitable rights, benefits or remedies, other than to the extent set forth in Sections 12.1 and 12.2.

[signature page follows]

WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective representatives thereunto duly authorized, all as of the Effective Date.

[***]

By: /s/
Name:
Title:

JOURNEY MEDICAL CORPORATION

By: /s/
Name:
Title:

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

LICENSE AND SUPPLY AGREEMENT

This License and Supply Agreement (**"Agreement"**), dated as of March 10, 2015 (the **"Effective Date"**), is made by and between Journey Medical Corporation, a Delaware corporation (**"Journey"**), and Blu Caribe, Inc., a Puerto Rican corporation (**"Blu"**).

ARTICLE 1
DEFINITIONS

As used throughout this Agreement and any exhibits, schedules or attachments hereto, each of the following terms will have the respective meaning set forth below:

"Accounting Standards" shall mean U.S. generally accepted accounting principles, consistently applied throughout the organization of a party.

"Act" means the United States Federal Food, Drug, and Cosmetic Act as amended from time to time.

"Affiliate" means, with respect to a party, any other business entity that directly or indirectly controls, is controlled by, or is under common control with, such party. A business entity or party will be regarded as in control of another business entity if it owns directly or indirectly (i) in the case of corporate entities, more than fifty percent (50%) of the equity securities in the subject entity entitled to vote in the election of directors, and (ii) in the case of an entity that is not a corporation, more than fifty percent (50%) of the equity securities or other ownership interests in the subject entity with the power to direct the management and policies of such entity by any means whatsoever or entitled to elect the corresponding management authority.

"ANDA" means an abbreviated new drug application pursuant to 21 U.S.C. § 355(j) et seq., and the regulations promulgated thereunder, as such application may be amended or supplemented from time to time.

"Applicable Law" means all applicable provisions of constitutions, statutes, laws, rules, treaties, regulations, guidelines and orders of all governmental authorities and all applicable orders, rules and decrees of courts in the Territory.

"Blu ANDA" means the abbreviated new drug application No. 062269 filed with the FDA and all supplements and amendments thereto.

"Blu Indemnified Parties" has the meaning given in Section 12.2.

"Blu Net Profit" means Blu Net Sales less Cost of Blu Royalty Product less Distribution Costs incurred by Blu during the respective Contract Quarter.

"Blu Net Sales". means the gross invoice price from sales of the Blu Royalty Product in the Territory by Blu or its Affiliates, less:

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(a) returns, return reserves, and discounts, including discounts made by means of rebates, to direct or indirect customers, including patient rebate cards, wholesaler fees and chargebacks directly related to the sales of the Blu Royalty Product (and including rebates or other payments required to be paid to governmental entities in connection with sales of such product pursuant to the Omnibus Budget Reconciliation Act of 1990 and similar other Federal or state legislation or programs, including for damaged goods, returns, recalls, rebates, savings cards or rejections);

(b) applicable taxes (to the extent borne by Blu and separately stated on the invoice and included in the gross invoice price), other than income taxes;

(c) sales credits customary in the industry and accrued in accordance with applicable Accounting Standards, including price protection, shelf stock adjustments, other price adjustments, pre-procurement charges by customers (backorder charges), and other similar charges; and

(d) any other specifically identifiable costs or charges included in the gross invoice price for the Blu Royalty Product customarily deducted in the pharmaceutical industry, including, without limitation, shipping, and insurance.

Blu Net Sales shall be determined in accordance with Accounting Standards, consistent with Blu's books and records applicable in the Territory. Sales of Blu Royalty Product between Blu and any of its Affiliates for resale shall be excluded from the computation of Blu Net Sales, but the subsequent resale of Blu Royalty Product to an Third Party shall be included within the computation of Blu Net Sales.

"Blu Royalty Product" means generic Doxycycline Hyclate 50 mg tablets that are the subject of the Blu ANDA that do not contain any branding, including, without limitation, trademarks, logos, or brand names.

"Blu 100mg Product" means generic Doxycycline Hyclate 100 mg tablets that are the subject of the Blu ANDA that do not contain any branding, including, without limitation, trademarks, logos, or brand names.

"Business Day" means any day other than a Saturday, Sunday or legal holiday on which banks in New York, New York are closed.

"cGMP" means current Good Manufacturing Practices, as set forth in the United States Code of Federal Regulations (21 CFR part 210 & Part 211).

"Commercially Reasonable" means, with respect to the efforts to be expended or considerations to be undertaken by a party related to any objective, activity or decision to be undertaken hereunder, reasonable, good faith efforts to accomplish a similar objective, activity or decision under similar circumstances. Such efforts will be similar to those efforts, considerations and resources commonly used by a party for a similar product owned by it or to which it has rights, which product is at a similar stage in its product life and is of similar market potential taking into account the competitiveness of alternative products sold by third parties in the marketplace, the regulatory status, market conditions and the profitability of the product.

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"Convicted Entity" means a corporation, partnership or association that has been convicted of a criminal offense that falls within the ambit of 21 U.S.C. § 1320a — 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

"Convicted Individual" means an individual who has been convicted of a criminal offense that falls within the ambit of 21 U.S.C. § 1320a — 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

"Cost of Blu Royalty Product" shall mean an amount equal to [***] ([***] %) of the fully absorbed costs to manufacture a Blu Royalty Product, consisting of raw and packaging materials, labor and allocated overhead, based on the full absorption costing allocation method to manufacturing a Blu Royalty Product, in each case determined and recorded in accordance with Accounting Standards. Cost of Blu Royalty Product as of the Effective Date is set forth in Schedule B.

"Cost of Journey Product" shall mean an amount equal to [***] ([***] %) of the fully absorbed costs to manufacture a Journey Product, consisting of raw and packaging materials, labor and allocated overhead, based on the full absorption costing allocation method to manufacturing a Journey Product, in each case determined and recorded in accordance with Accounting Standards. Cost of Journey Royalty Product as of the Effective Date is set forth in Schedule B.

"Damages" has the meaning given in Section 12.1.

"Data Package" means the technical manufacturing and quality information contained within the Blu ANDA and specifications and control documents that provide for the technical and regulatory transfer of data to a third party manufacturer of Journey Product to assure supply of the Journey Products. The information required in the Data Package is listed in Schedule D.

"Debarred Entity" means a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. § 335a (a) or (b) from submitting or assisting in the submission of any abbreviated drug application, or a subsidiary or Affiliate of a Debarred Entity.

"Debarred Individual" means an individual who has been debarred by the FDA pursuant to 21 U.S.C. § 335 (a) or (b) from providing services in any capacity to a person that has an approved or pending drug product application.

"Detail" means a face-to-face contact by a sales representative with a healthcare professional during which time a promotional message involving a Journey Product is presented to the healthcare professional in the first position. The sales representative will, as is commercially reasonable inquire, investigate, promote, request, or identify where a prescriber may prescribe Journey Product. Sales aids, product samples, co-pay cards, and various other marketing materials or promotions may be utilized when commercially reasonable.

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"Distribution Costs" means total costs incurred by a party for customary distribution expenses (e.g., insurance, transportation and freight outbound charges, VAT tax and duties).

"Excluded Entity" means an entity (i) that has been excluded, debarred, suspended or is otherwise ineligible to participate in federal health care programs such as Medicare or Medicaid by the Office of the Inspector General (**"OIG/HHS"**) of the Department of Health and Human Services, or (ii) that has been excluded, debarred, suspended or is otherwise ineligible to participate in federal procurement and non-procurement programs, including those produced by the United States General Services Administration (**"GSA"**).

"Excluded Individual" means an individual who has been excluded, debarred, suspended or is otherwise ineligible to participate in (i) federal health care programs such as Medicare or Medicaid by the OIG/HHS, or (ii) federal procurement and non-procurement programs, including those produced by the GSA.

"FDA" means the U.S. Food and Drug Administration, and any successor or replacement agency.

"Force Majeure Event" has the meaning given in Article 8.

"Initial Forecast" has the meaning given in Section 4.3.

"Journey Marketing Costs" means total costs incurred by Journey for customary selling, promoting and marketing Journey Product within the Territory, including, without limitation all (i) sales force costs, (sales team expenses, sales compensation, promotional budgets, training, equipment relating to sales and engaging customers, sample tracking, and FDA required methods including Sunshine Act and PDMA compliance, (ii) expenses regarding sales force targeting, for example: sales force automation, territory alignment, prescription data, and call and detail tracking, (iii) expenses regarding marketing tactical programs to enhance product uptake, for example: sales aid development, copay cards, samples, and other communications to reach and influence, including all support provided to the sales team. Journey Marketing Costs shall be documented in accordance with Accounting Standards.

"Journey Net Profit" means Journey Net Sales less (i) Cost of Journey Product, (ii) Distribution Costs incurred by Journey during the respective quarter, and (iii) Journey Marketing Costs, subject to limits set forth in section 5.3(d) incurred by Journey in the respective Quarter.

"Journey Net Sales" means the gross invoice price from sales of the Journey Product in the Territory by Journey or its Affiliates, less:

(a) returns, return reserves, and discounts, including discounts made by means of rebates, to direct or indirect customers, including patient rebate cards, wholesaler fees and chargebacks directly related to the sales of the Journey Product (and including rebates or other payments required to be paid to governmental entities in connection with sales of such product pursuant to the Omnibus Budget Reconciliation Act of 1990 and similar other Federal or state legislation or programs, including for damaged goods, returns, recalls, rebates, savings cards or rejections);

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(b) applicable taxes (to the extent borne by Journey and separately stated on the invoice and included in the gross invoice price), other than income taxes;

(c) sales credits customary in the industry and accrued in accordance with applicable Accounting Standards, including verifiable credits taken for price protection, shelf stock adjustments, other price adjustments, pre-procurement charges by customers (backorder charges limited to only those charges directly resulting from a supply interruption by Blu); and

(d) any other specifically identifiable costs or charges included in the gross invoice price for the Journey Product customarily deducted in the pharmaceutical industry, including, without limitation, shipping, and insurance.

Journey Net Sales shall be determined in accordance with Accounting Standards, consistent with Journey's books and records applicable in the Territory. Sales of Journey Product between Journey and any of its Affiliates for resale shall be excluded from the computation of Journey Net Sales, but the subsequent resale of Journey Product to an Third Party shall be included within the computation of Journey Net Sales.

"Journey Product" means branded Doxycycline Hyclate 50 mg tablets and 100 mg tablets covered by the Blu ANDA, including samples, for sale to the human market.

"Latent Defect" means any instance where the Journey Product fails to conform to the Specifications for such Journey Product and such failure would not be discoverable upon reasonable physical inspection of such Journey Product or other testing customarily conducted by Journey or its designee upon receipt by Journey in accordance with its standard operating procedures.

"Launch Quantities" has the meaning set forth in Section 4.3(b).

"NDC Number" shall mean a unique 3-segment number that identifies the labeler/vendor, the product and the trade package size.

"Phase 1" shall mean the time period prior to a Third Party Launch.

"Phase 2" shall mean the time period beginning immediately after Phase 1 and ending 2 years afterwards.

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"Phase 3" shall mean the time period commencing upon the expiration of Phase 2 and containing until the termination of the Agreement.

"Product Intellectual Property Rights" means all patent rights, know-how and other intellectual property rights owned or controlled by Blu or its Affiliates covering the manufacture, use or sale of Journey Products.

"Journey Indemnified Parties" has the meaning given in Section 12.1.

"Specifications" means the specifications for the design, composition, manufacture, packaging, branding, labeling, and quality control of the Journey Product as set forth in Schedule A hereto.

"Territory" means the United States of America, its commonwealths, territories and possessions, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Marshall Islands, and Guam.

"Third Party" shall mean any entity other than Blu, Journey and their respective Affiliates.

"Third Party Launch" means the commencement by a Third Party that is not an Affiliate of Blu of commercial sales of generic Doxycycline 1-lyclate 50 mg tablets in the Territory intended for human use where such sales are not under the Blu ANDA.

ARTICLE 2
RIGHT TO USE

2.1 Grant of Rights.

(a) Exclusive Rights. Blu hereby appoints Journey as the exclusive (except as set forth in Section 2.1(b) below) distributor of the Journey Products, with the right to market, promote, distribute, offer to sell and sell the Journey Products, in the Territory under the Blu ANDA. For clarity, the foregoing exclusivity shall prohibit Blu and its Affiliates from directly or indirectly distributing, marketing, selling or accepting orders for the sale of Journey Product and, in the Territory, and from supplying or licensing any Third Party to do each and all of the foregoing, except as set forth in Section 2.1(b) below.

(b) Nonexclusive Rights. Notwithstanding Section 2.1(a), Blu shall retain the right to market, promote, distribute, offer to sell and sell the Blu 100 mg Product in the Territory under the Blu ANDA. Further, Blu shall retain the exclusive rights to market the 50 mg Product for animal use in the Territory.

(c) Use of Affiliates. Notwithstanding anything to the contrary contained herein, Journey may discharge any obligations and exercise any right hereunder, or performance hereunder, through any of its Affiliates, provided that Journey shall remain responsible in all cases for compliance with this Agreement by such Affiliates.

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2.2 Restrictions. Except as provided in Section 2.1(b) and Section 2.3, neither Blu nor its Affiliates shall, directly or indirectly during the Term, manufacture, market, promote, distribute, offer to sell or sell a product containing Doxycycline Hyclate in the Territory, including, without limitation Blu Royalty Products.

2.3 Blu Royalty Products. Upon Journey's written approval following a Third Party Launch (which approval will not be unreasonably withheld following a Third Party Launch), the restrictions set forth in Section 2.2 shall terminate solely with respect to Blu Royalty Products.

2.4 Right of First Negotiation.

(a) During the Term, in the event that Blu desires to enter into an agreement with a Third Party with respect to the sale or other disposition of the Blu ANDA , Blu will notify Journey of the same (a **"Application Notice"**). If Journey would like to negotiate an Agreement to acquire the Blu ANDA in the Territory, it shall notify Blu in writing of such request within fifteen (15) days after its receipt of an Application Notice (the **"Notice Period"**). Blu shall, for a period of thirty (30) days following receipt of such notification from Journey (the **"Negotiation Period"**) enter into good faith negotiations with Journey with respect to the acquisition of the Blu ANDA.

(b) If Journey (i) does not request to pursue such an agreement within the Notice Period, then Blu will be free to enter into an agreement with a Third Party with respect thereto or (ii) does request that the Parties negotiate such an agreement regarding the Blu ANDA within the Notice Period, but the Parties do not conclude an agreement within the Negotiation Period, then Blu shall be free to enter into an agreement with a Third Party but only if (x) this Agreement is assigned to such Third Party, (y) such Third Party agrees in writing (in a form and substance approved in writing by Journey) to assume all of Blu's obligations and liabilities hereunder and (z) Blu guarantees in writing (in a faun and substance approved in writing by Journey) the performance of this Agreement by such Third Party. Any assignment of the Blue ANDA in violation of this Agreement shall be void ab initio.

2.5 ANDA Rights. Blu shall retain all right, title and interest in and to the Blu ANDA during the term of this Agreement. During the term of this Agreement, Blu shall not assign or transfer the Blu ANDA to any Third Party.

ARTICLE 3
SALES AND MARKETING ACTIVITIES

3.1 Commercial Efforts. Journey will use Commercially Reasonable efforts to market and sell the Journey Products. Until a Third Party Launch occurs, Journey will conduct at least [***] Details with the Journey Products in P1 position during each year of this Agreement. Upon a Third Party Launch, the foregoing obligation to conduct minimum details shall terminate. Efforts of Affiliates shall be deemed efforts of Journey. Within 30 days after the last day of each calendar quarter, Journey will provide Blu with a quarterly report of Details that summarizes the number of Details conducted during the respective calendar quarter. The Details will be logged into a computer database that will record all interactions and capture prescriber signatures for samples. Details will be recorded within a reasonable time period of their occurrence.

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3.2 Journey Pricing. Journey will have independent, sole discretion to determine the pricing; terms of sale, marketing, and selling decisions for the Journey Products without any consultation with, input from, or prior notice to Blu.

3.3 Rebate Processing.

(a) Journey will be solely responsible for all federal, state and local government and private purchasing, pricing or reimbursement programs with respect to its sales of the Journey Product (including, without limitation, co-pay cards), including taking all necessary and proper steps to execute agreements and file other appropriate reports and other documents with governmental and private entities and Journey will be solely responsible for payment and processing of all rebates, whether required by contract or local, state or federal law, for its sales of the Journey Product.

(b) To the extent Blu is required by Applicable Law to refer to Journey Product sales made by Journey in Blu's government price reports, Journey will provide Blu with aggregate sales figures for the Journey Product sales made by Journey. This information will be contained in the Journey Revenue Share Report provided to Blu pursuant to Section 5.3(c). Blu shall use any data or information relating to pricing that Journey provides under this Section 3.3 or otherwise for the limited purpose of complying with price reporting to regulatory authorities that is required by Applicable Laws and for no other purpose. Blu shall not use any such data or information in connection with its sales, marketing or contract operations.

ARTICLE 4
SUPPLY AND MANUFACTURE

4.1 Bin Supply Obligations. Subject to the provisions of this Article 4, Blu will supply to Journey one hundred percent (100%) of Journey's purchase order requests for the Journey Product. Blu will supply the Journey Product in the dosage forms and unit types set forth on Schedule A.

4.2 **Journey Purchase Obligations**. Except as set forth below and in Section 4.11, Journey and its Affiliates shall purchase 100% of their requirements of Journey Product from Blu, provided, however, that, commencing upon a Supply Interruption and continuing thereafter until the termination of this Agreement, Journey may at any time purchase from a Backup Manufacturer the percent of its requirements from a Backup Manufacturer that are required by such Backup Manufacturer (as documented in an agreement between the Backup Manufacturer and Journey to qualify and maintain such Backup Manufacturer as a manufacturer of Journey Product. For each tablet of Journey Product ordered and received by Journey from a Backup Manufacturer other than during a Supply Interruption, Journey will pay Blu [***] ($[***]) (the **"Overhead Compensation Payment"**). The Overhead Compensation Payment will be paid by Journey on a calendar quarter basis within sixty (60) days following the last day of each calendar quarter in which Overhead Compensation Payment accrues. For the avoidance of doubt, no Overhead Compensation Payment is due with respect to Journey Product ordered by Journey during a Supply Interruption.

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4.3 **Journey Initial Forecast; Launch Quantities**.

(a) Within thirty (30) days after the Effective Date, Journey will deliver to Blu a forecast for all Journey Product required for the twelve (12) month period commencing on April 1, 2015, excluding Launch Quantities (the **"Initial Forecast"**). The Initial Forecast will be non-binding upon the parties.

(b) In addition to Journey Product supplied to Blu pursuant to purchase orders submitted by Journey hereunder, Journey hereby orders, and Blu hereby agrees to supply to Journey, before July 31, 2015 between [***] tablets and [***] tablets of Journey Product (50 mg strength) of Journey Product (which will be provided in [***] ([***]) batches); (**"Launch Quantities"**). Such Journey Product shall be (i) bottled (i.e., breakdown of trade sizes and sample sizes) as instructed by Journey in writing within thirty (30) days of the Effective Date and (ii) shipped to a destination identified by Journey in writing.

4.4 **Ongoing Forecasts**. On the fifteenth day of the second month of each calendar quarter (commencing with May 15, 2015), Journey shall provide Blu a good faith 12-month rolling forecast of anticipated orders of Journey Product to be placed during each month of such period (each, a **"Forecast"**). Each Forecast will specify, on a month-by-month basis during the 12-month period covered by the particular Forecast, the quantity of Journey Product required during such period. The first quarter (consecutive three month period ending in March, June, September or December) of each such Forecast shall be a binding commitment by Journey to place purchase orders for the forecasted quantity of Journey Product (the **"Binding Purchase Commitment"**). Each such Forecast shall otherwise be non-binding, except as provided below, but shall reflect Journey's good faith expectation (at the time of submitting the Forecast) of the orders of Finished Product and Finished MIT and projected delivery dates during the 12-month period.

4.5 **Orders**. Journey shall order Journey Product by submitting written purchase orders to Blu specifying (i) the quantity of Journey Product ordered, and (ii) the desired delivery date for such Journey Product, which shall be no earlier than 60 days from submission of purchase order. Journey shall not submit orders more frequently than once every three (3) months without prior agreement from Blu, which agreement will not be unreasonably withheld or delayed. Journey shall submit its purchase order for the binding portion of each Forecast to Blu at least 60 days in advance of the desired delivery date. All purchase orders that do not exceed the forecasted quantity of Journey Product specified in the binding portion of a Forecast or the Initial Forecast shall be deemed accepted by Blu upon receipt. Any purchase order submitted by Journey to Blu shall reference this Agreement and shall be governed exclusively by the terms contained herein. The parties hereby agree that the terms and conditions of this Agreement shall supersede any term or condition in any purchase order, confirmation or other document, furnished by Journey or Blu that is in any way inconsistent with these terms and conditions. Not later than 7 days after receipt of a purchase order, Blu shall confirm its receipt of the purchase order in writing. For any purchase order that exceeds the forecasted quantity specified in the binding portion of a Forecast or the Initial Forecast, the portion of the order not in excess of such quantity shall be deemed accepted by Blu and Blu shall notify Journey whether or not Btu will be able to fulfill the excess portion of such purchase order (or part thereof) and the expected delivery date for fulfillment, provided that in all events, Blu shall use Commercially Reasonable efforts to fulfill the order with respect to such excess portion as soon as reasonably practicable. Blu shall supply to Journey the forecasted quantity in the binding portion of the applicable Forecast or the Initial Forecast by the delivery date set forth in the respective order and shall use Commercially Reasonable efforts to supply to Journey any quantity in excess of such forecasted quantity as soon as reasonably practicable.

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4.6 **Shipping**. All Journey Products shall be supplied in finished product containers, F.O.B., point of origin and risk of loss and title to the Journey Product shall pass to Journey upon shipment of the Journey Product from Blu's facility located in Dorado, PR. Until so shipped, Blu shall ensure that the Journey Product is handled and stored in accordance with the Specifications, cGMP, and all Applicable Laws. Each shipment of Journey Product will be accompanied by a certificate of compliance confirming that the Journey Product has been manufactured in accordance with this Agreement and the Blu ANDA. Any deviations and investigations related to the Journey Product will be documented by Blu in accordance with the Blu ANDA and the Quality Agreement.

4.7 **Quality Agreement**. On the Effective Date, the parties are entering into a Quality Agreement in substantially the form attached hereto asExhibit A, setting forth the specific responsibilities, procedures and guidelines for batch release, quality control testing, quality assurance review, acceptance testing and other quality-related aspects of the manufacture and release of Journey Product, as such agreement may be amended from time to time by mutual written agreement of the parties (the **"Quality Agreement"**). Each party agrees to perform the responsibilities assigned to such party under the Quality Agreement in accordance with the terms and conditions of the Quality Agreement. In case of any conflict between the provisions of this Agreement and those of the Quality Agreement, the Quality Agreement shall prevail as to any quality-related matter, and this Agreement shall prevail as to all other matters.

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4.8 **Quality Audits**. Blu shall maintain all quality control documentation and acceptance test results for Journey Product supplied hereunder for a period and in a manner consistent the Quality Agreement, the Blu ANDA, cGMP and Applicable Law. Journey may periodically review such documentation and results, and, as set forth in the Quality Agreement, audit and verify the adherence of Blu to the quality control procedures and standards set forth in the Quality Agreement or prescribed by Applicable Law or cGMP.

4.9 **Acceptance/Rejection**. Except as set forth in this Agreement, Journey Products may not be returned to Blu. Journey (or its authorized representative) shall perform a reasonable and customary visual inspection of all Journey Product that is reasonably discernible upon such visual inspection not to (i) conform to Specifications, Blu ANDA, Applicable Laws and cGMP or (ii) have at least twenty-two months of shelf life remaining at the time of receipt (unless otherwise agree to in writing by Journey) (collectively, the **"Journey Product Requirements"**); (in each case, **"Non-Conforming Product"**) within 10 days of receipt of Journey Product by Journey's distributor. Notwithstanding the foregoing, Journey may reject Journey Product after such period following discovery of latent defects in such Journey Product that could not reasonably have been discovered by a reasonable and customary visual inspection, provided that Journey provides to Blu notice of Non-Conforming Journey Product within two (2) days following discovery of such latent defect. If any Journey Product is found to be Non-Conforming Product and is reported by Journey to Blu in the above time frame, then Blu shall, at Journey's request and option (to be exercised by Journey promptly), either: (a) replace such Non-Conforming Product at no additional charge to Journey; (b) refund to Journey the amount paid (if already paid) to Blu for such Non-Conforming Product or cancel the applicable purchase order if not paid; or (c) credit Journey's account in an amount equal to the amount paid for such Non-Conforming Product, and in any case ((a), (b) or (c)) Blu shall reimburse all shipping charges for the Non-Conforming Product from the destination of the original shipment, subject to receipt of invoice. Blu shall reimburse Journey for the reasonable costs incurred by Journey in properly disposing of or shipping to Blu (as instructed by Blu) such Non-Conforming Product, subject to receipt of invoice.

4.10 **Dispute Regarding Rejection**. If the parties disagree as to whether a particular delivery of Journey Product contains Non-Conforming Product, and cannot resolve such disagreement within 60 days, the parties shall appoint an independent testing laboratory or other appropriate expert mutually acceptable to the parties (the **"Testing Laboratory"**) to (a) review data that are in question or (b) to oversee the evaluation and testing of a sample of Journey Product at the Testing Laboratory. The Testing Laboratory will conduct testing in accordance with the methods established for testing as set forth in the applicable Specifications. The party whose position in the dispute was not supported by the Testing Laboratory's findings shall bear the costs of the Testing Laboratory.

4.11 **Supply Continuity**.

(a) In the event Blu determines that it will not be able to supply Journey Products to Journey in material satisfaction of the most recent orders and/or Forecasts, Blu shall promptly notify Journey in writing of such determination, which notice shall provide Journey with the details on the extent of the expected shortfall of supply, the causes of such inability to supply, and Blu's proposed solution to the problem.

(b) In the event Journey reasonably believes that Blu will be unable to meet Journey's forecasts for a Journey Product for more than thirty (30) days (a **"Supply Interruption"**), then Journey shall have the right, upon thirty (30) days written notice to Blu (**"Manufacturing Notice"**), to manufacture or have manufactured by a Backup Manufacturer (as defined below) the Journey Products unless Journey has, during such thirty (30) day period (the **"Assurance Period"**), received reasonable evidence of Blu's ability to meet such forecasts and reasonably determined that Blu will be able to meet such forecasts (**"Supply Continuity Assurance Confirmation"**). Without limiting the generality of the foregoing, a Supply Interruption shall be deemed to occur if:

(i) Blu, with respect to any order of Journey Product, fails to supply, on a timely basis, at least 90% of Journey Product under such order conforming to the Journey Product Requirements;

(ii) a Force Majeure Event affecting the performance of Blu specified in Article 8 shall continue for more than sixty (60) days; or

(iii) any facility involved in manufacturing-related activities regarding the Journey Product (including, without limitation, packaging, labeling, testing, storing and release) is prohibited from, or materially adversely affected in its ability to, produce, store, or otherwise be in involved in the Manufacture or provision of such Journey Product to Journey under this. Supply Agreement by Regulatory Authorities or due to a failure to comply with Applicable Laws or cGMP.

(c) Notwithstanding anything to the contrary herein, Journey shall at any time during the Term be entitled to qualify itself, its Affiliates and/or one or more Third Parties (**"Backup Manufacturers"**), to manufacture Journey Products for the purpose of such Backup Manufacturers supplying Journey with Journey Product upon a Supply Interruption. Blu acknowledges that the manufacture of Journey Product by a Backup Manufacturer shall not be a violation of this Agreement or any rights of Blu or its Affiliates.

(d) Subject to Blu's right to reject a Backup Manufacturer as described below, upon Journey's written request at any time (the **"Backup Manufacturer Request"**), Blu shall promptly (i) file (within thirty (30) days of Blu's receipt from Journey of all information reasonably necessary to file) with the FDA a supplement to the Blu ANDA and any other documents necessary to designate, qualify, authorize and obtain FDA approval of, Backup Manufacturers identified by Journey in the Backup Manufacturer Request to manufacture Journey Product and (ii) take any other actions reasonably requested by Journey to (x) accomplish such designation, qualification, authorization or approval and (y) obtain approvals necessary for Blu to manufacture or have manufactured Journey Product. Blu shall not take any action that would result in the termination of, or otherwise adversely affect, such designation and authorization. Journey shall reimburse Blu for its reasonable, documented out-of-pocket third party costs incurred in performing its obligations under this Section 4.11(d). If Blu, within seven (7) days of a receipt of a Backup Manufacturer Request, reasonably determines that a Backup Manufacturer identified therein (i) will not be able to manufacture Product in compliance with the Product Requirements, (ii) is at such time a manufacturer of doxycycline or a product which directly competes with Doxycycline, or (iii) reasonably unsuitable from a compliance or risk standpoint, then it may reject such Backup Manufacturer by providing to Journey written notice of the same during such seven (7) day period, which notice shall include reasonably detailed reasons for such rejection.

EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

(e) Within thirty (30) days of the Effective Date, Blu shall deliver to Journey (and/or any Backup Manufacturer designated thereby), copies of the Data Package and any other information, including technical information, that is owned or controlled by, or in the possession of, Blu or any Affiliate thereof, that is reasonably necessary or useful to permit a Backup Manufacturer to manufacture Journey Product, including but not limited to information regarding acquiring raw materials from Blu's sources of such raw materials (the **"Transferred Know-How"**). Blu shall promptly provide any other information requested by Journey from time to time during the Term that is reasonably necessary or useful to permit a Backup Manufacturer to manufacture Journey Product. Blu shall provide Journey or any Third Party designee thereof reasonable assistance, at Journey's request, with respect to understanding and implementing such Transferred Know-How.

(f) Blu hereby grants Journey a license, until the expiration of the then-current Term to and under all Product Intellectual Property Rights, Transferred Know-How and the Blu ANDA (including a right to reference the Blu ANDA) to (i) use, make and have made Journey Products worldwide for Qualification Purposes-and (ii) sell, offer for sale and import such Journey Products in the Territory. **"Qualification Purposes"** means (x) qualifying as a manufacturer of Journey Products and (y) maintaining qualification as a manufacturer of Journey Products.

(g) If there is no Supply Assurance Continuity Confirmation during the Assurance Period, then, effective upon the expiration of the Assurance Period: (i) Blu hereby grants Journey, until the expiration of the then-current Term, a license under and to all Product Intellectual Property Rights, Transferred Know-How and the Blu ANDA (including a right to reference the Blu ANDA) to (x) use, make and have made Journey Products worldwide and (y) sell, offer for sale and import such Journey Products in the Territory and (ii) all of Journey's obligations under Sections 4.1-4.4 shall terminate, except the obligation to make the Overhead Compensation Payment in Section 4.2. For the avoidance of doubt, the obligations set forth in Section 5.3 shall remain in full force and effect.

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(h) In the event a Supply Interruption occurs and Journey reasonably determines that (i) Blu has resolved the issues that caused the Supply Interruption and (ii) Blu will be able to supply, in compliance with this Agreement, Journey's requirements of Journey Products for a continuous period of twelve (12) months, then (x) the respective Supply Interruption shall be deemed to have ended, (y) Journey shall again be subject to the requirements of Sections 4.1-4.4 and (z) the license set forth in Section 4.11(g) shall no longer be in effect.

ARTICLE 5
CONSIDERATION

5.1 Fees.

(a) Upon the execution of this Agreement, Journey will pay Blu a refundable fee in the amount of One Million Two Hundred Fifty Thousand Dollars ($1,250,000) (the **"Initial Fee"**). In the event Journey does not receive before July 31, 2015 one hundred percent (100%) of the Launch Quantities in compliance with the Product Requirements, (i) Blu shall refund to Journey the full Initial Fee on or before August 15, 2015 and (ii) until Journey receives such refund in full, Journey is hereby granted a perpetual, irrevocable, fully-paid exclusive right and license under the Blu ANDA and all patent rights, know-how and other intellectual property rights owned or controlled by Blu and its Affiliates to make, have made, use, sell, offer for sale, import and otherwise commercially exploit Journey Products. Notwithstanding anything to the contrary herein, the foregoing license shall survive the termination of this Agreement.

(b) If Journey receives confirmation from Blu, on or before July 31, 2015, that at least [***] tablets of the Launch Quantities are on Blu's loading dock and ready for shipment to Journey or its designee, then Journey shall pay Blu [***] Dollars ($[***]) within 5 days of such confirmation.

5.2 Purchase Price.

(a) The price to be paid by Journey for each Journey Product hereunder (the **"Price"**) shall be equal to Cost of Journey Product as of the Effective Date, as adjusted below. At least sixty (60) days prior to each annual anniversary of the Effective Date, the parties shall review the then-current Cost of Journey Product and the parties shall, in good faith, amend the nice by a mutually agreed upon proportionate amount prior to such anniversary to reflect (i) any documented, verifiable decreases or increases in the cost of materials used to manufacture the Journey Product as compared to such costs included in the Cost of Journey Product used as the basis for the then-current Price and (ii) any documented, verifiable decreases, or up to [***]% of any documented, verifiable increases, in labor and allocated overhead used to manufacture Journey Product (based on the full absorption cost allocation method to determine such portion of the cost of manufacturing a Journey Product) as compared to such overhead amount included in the Cost of Journey Product used as the basis for the current Price, provided that (1) any such change in Price shall not be effective until such anniversary.

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(b) Blu shall invoice Journey for the Price of the Journey Product promptly after delivery of such Journey Product. The Price shall be due and payable by Journey to Blu within thirty (30) days after invoice date of the Product to Journey.

(c) Blu shall keep complete, true and accurate books of accounts and records for the purpose of determining Cost of Journey Product **('Cost Records"**). Such books and records shall be kept for such period of time no less than three years following the end of the calendar year to which they pertain.

(d) Blu shall use commercially reasonable efforts to minimize the Cost of Journey Product. Such efforts on the part of Blu shall include, but not be limited to, (i) adopting any changes to manufacturing processes, or any other aspect of the manufacturing and supply of Journey Product hereunder proposed by Journey with the intent or having the effect of reducing the Cost of Journey Product, (ii) continually developing and implementing process improvements intended to increase manufacturing efficiencies and decrease manufacturing costs, (iii) obtaining raw materials at the lowest possible price, and (iv) otherwise seeking reductions in its cost to manufacture, handle, store, and otherwise supply Journey Product hereunder.

5.3 **Revenue Sharing**.

(a) Journey Revenue Sharing. Journey shall pay Blu the following amounts (the **"Journey Revenue Share"**)

(i) With respect to the 100 mg form of the Journey Product, Journey shall pay Blu an amount equal to [***] % of Journey Net Sales.

(ii) With respect to the 50 mg form of the Journey Product, Journey shall pay Blu an amount equal to [***] % of Journey Net Profit with respect to Net Sales occurring during Phase 1 and Phase 2.

(iii) With respect to Journey Net Sales of the 50 mg —form of the Journey Product occurring during Phase 3, Journey shall pay Blu an amount equal to [***] % of Journey Net Sales.

(b) Blu Revenue Sharing. Blu shall pay Journey a revenue share (the **"Blu Revenue Share"**) equal to [***] % of Blu Net Sales with respect to Blu Net Sales occurring during Phase 1 and Phase 2. No payments shall be due with respect to Blu Net Sales occurring during Phase 3.

(c) Payment Terms. Amount payable under Section 5.3 that have accrued during a particular Calendar Quarter shall be paid, on a calendar quarter basis, within 45 days after the end of each calendar quarter during which the payment obligation accrued. Within 45 days after the end of each calendar quarter during which Journey Net Sales have occurred, Journey shall deliver to Blu together with the applicable Journey Revenue Share, a written report summarizing the calculation of such Journey Revenue Share (the **"Journey Revenue Share Report"**). An example of the Journey Revenue Share Report is attached hereto as Exhibit B. Blu acknowledges that such example is solely for illustrative purposes and that Journey is not bound in any respect by such example. Within 45 days after the end of each calendar quarter during which Btu Net Sales have occurred, Blu shall deliver to Journey together with the applicable Blu Revenue Share, a written report summarizing the calculation of such Blu Revenue Share. Each such report shall be deemed "Confidential Information" of the party providing such report subject to the obligations of Article 10 of this Agreement. For three (3) years after the occurrence of Journey Net Sales, Journey shall keep complete and accurate records of such Journey Net Sales in sufficient detail to confirm the accuracy of the Journey Revenue Share and the calculation thereof. For three (3) years after the occurrence of Blu Net Sales, Blu shall, in accordance with the Accounting Standards, keep complete and accurate records of such Blu Net Sales in sufficient detail to confirm the accuracy of the Blu Revenue Share and the calculation thereof.

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(d) Journey Net Profit Cost Limits. Within ninety (90) days following the last day of each calendar year in' which Journey pays Blu a Journey Revenue Share pursuant to Section 5.3(a)(ii) (the **"Journey Net Profit Share"**), Journey shall determine the aggregate Journey Marketing Costs deducted in such calendar year (**"Aggregate Annual Marketing Costs"**). If the Aggregate Annual Marketing Costs in any such calendar year exceeds the following amounts, as applicable: (i) during the first calendar year of this Agreement, the greater of $[***] or [***] % of Journey Net Sales during such calendar year, (ii) in the second calendar year of this Agreement, the greater of $[***] or [***] % of Net Sales during such calendar year, (iii) in the third calendar year of this Agreement, the greater of $[***] or [***] % of Net Sales during such calendar year, or (iv) in each calendar year thereafter, the greater of $[***] or [***] % of Net Sales during such calendar year (each of items (i), (ii), (iii) and (iv), a **"Cost Cap"**), then (x) Journey shall recalculate the Journey Net Profit Share for such calendar year (the **"Adjusted Journey Net Profit Share"**), provided that the Journey Marketing Costs deducted from Journey Net Profit in such calendar year shall not exceed the applicable Cost Cap , and (y) Journey shall, within ninety (90) days following the last day of such calendar year, pay Blu the difference between the Adjusted Journey Net Profit Share and the Journey Net Profit Share actually paid to Blu for such calendar year. Journey shall, in accordance with the Accounting Standards, keep complete, true and accurate books of accounts and records for the purpose of determining Journey Net Profit Share. Such books and records shall be kept for such period of time no less than three years following the end of the calendar year to which they pertain.

5.4 **Audit Rights**.

(a) During the term of this Agreement and for a period of 60 days thereafter upon not less than 30 days' prior written notice, Journey shall permit an independent, certified public accountant of national recognition (for the purposes of this Section 5.4, the **"Auditor"**) selected by Blu and reasonably acceptable to Journey, which acceptance shall not be unreasonably conditioned, withheld or delayed, to audit or inspect those books or records of Journey that relate to the Journey Revenue Share for the sole purpose of verifying such payments.

(b) During the term of this Agreement and for a period of 60 days thereafter upon not less than 30 days' prior written notice, Blu shall permit an Auditor selected by Journey and reasonably acceptable to Blu, which acceptance shall not be unreasonably conditioned, withheld or delayed, to audit or inspect (i) those books or records of Blu that relate to the Blu Revenue Share for the sole purpose of verifying such payments and (ii) the Cost Records for the sole purpose of verifying the Cost of Journey Products.

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5.5 **Payment Dispute**. In the event Journey disputes a payment due to Blu hereunder in good faith, Journey shall pay the undisputed portion during the time period required herein and the parties shall work together in good faith to resolve such dispute.

ARTICLE 6
TERM & TERMINATION

6.1 **Term**. The term of this Agreement will commence on the Effective Date, and subject to the terms of this Article 6, will continue for ten (10) years thereafter (the **"Initial Term"**). Upon the expiration of the Initial Term, the term of this Agreement shall automatically renew for additional three (3) year periods (each, a **"Renewal Term"** and, together with the Initial Term, the **"Term"**) until such time as a period gives the other party notice of termination at least one hundred eight (180) days prior to the expiration of the Initial Term or the then current Renewal Term.

6.2 **Termination by Blu**. This Agreement may be terminated by Blu:

(a) If Journey shall be in breach of any material obligation hereunder and has not cured such breach within ninety (90) days after receipt of a notice from Blu requesting the correction of such breach (unless such breach is by its nature not susceptible of being cured or the giving of such notice would be futile or impracticable, in which event no notice shall be necessary). Such termination shall be effective upon the occurrence of such breach or, if a right to cure exists, upon failure of Journey to cure such breach within the specified time period. For the avoidance of doubt, a breach of the Binding Purchase Commitment shall be deemed a breach of a material obligation;

(b) Upon the filing or institution of any bankruptcy, reorganization, liquidation or receivership proceedings by Journey, or upon the failure by Journey for more than ninety (90) days to discharge or obtain the dismissal of any such actions filed against it. Such termination shall be effective upon receipt of notice from Blu.

6.3 **Termination by Journey**. This Agreement may be terminated by Journey:

(a) if Blu shall be in breach of any material obligation hereunder (other than a payment obligation), and has not cured such breach within ninety (90) days after receipt of a notice from Blu requesting the correction of such breach (unless such breach is by its nature not susceptible of being cured or the giving of such notice would be futile or impracticable, in which event no notice shall be necessary). Such termination shall be effective upon the occurrence of such breach or, if a right to cure exists, upon failure of Blu to cure such breach within the specified time period;

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(b) upon the filing or institution of any bankruptcy, reorganization, liquidation or receivership proceedings by Blu, or upon the failure by Blu for more than ninety (90) days to discharge or obtain the dismissal of any such actions filed against it. Such termination shall be effective upon receipt of notice from Journey;

(c) upon a breach by Blu of Section 2.4 or 2.5; or

(d) if (i) Journey does not receive confirmation from Blu of the availability for shipment of the Launch Quantities in compliance with the Product Requirements before July 31, 2015 or (ii) if such Launch Quantities are not available at such time.

6.4 **Effect of Expiration or Termination**.

(a) Upon expiration or termination of this Agreement, Journey and its Affiliates shall immediately cease all sales, marketing and distribution of the Journey Product except that Journey and its Affiliates shall have the right to market, distribute, offer to sell and sell the remaining Journey Product then on hand in their inventory as of the date of such expiration, consistent with Journey's existing practices, which shall not be commercially unreasonable.

(b) Upon termination of this Agreement by Journey pursuant to Section 6.3, Journey shall have the option, in its sole discretion, to cancel all or any portion of any then outstanding purchase orders.

(c) Termination of this Agreement for any reason will not release either party hereto from any liability which at such time has already accrued or which thereafter accrues from a breach or default prior to such expiration or termination, nor affect in any way the survival of any other right, duty or obligation of either party hereto which is expressly stated elsewhere in this Agreement to survive such termination.

ARTICLE 7
REGULATORY MATTERS

7.1 **Facility Licenses**. Blu shall obtain and maintain, or cause to be obtained and maintained, for the facility(ies) at which Journey Product is manufactured, labeled, packaged, tested or stored, all permits, licenses and approvals (including facilities licenses) required for the manufacture and supply of Journey in compliance with this Agreement. In the event Blu subcontracts any of its obligations hereunder, Blu shall be responsible for the subcontractors compliance with the terms and conditions of this Agreement, and Blu shall be responsible for the performance of such subcontractors.

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7.2 **FDA Communications**. Journey and Blu agree, to promptly notify the other party in the event they receive any communication or notice from FDA with respect to the Journey Product or Doxycycline Hyclate and each party will promptly provide a copy of such communications to the other. The parties will cooperate in good faith in responding to any such FDA inquiry or in making any report to FDA with respect to the Journey Product. Journey will have the responsibility in the Territory for complying with all regulatory requirements and other matters which relate solely to Journey's acting as a distributor of the Journey Product in the Territory. All other regulatory reporting matters (including adverse event and product complaint reporting) will be Blu's responsibility for the Journey Product.

7.3 **Labeling and Packaging**.

(a) Journey shall obtain NDC Numbers for the Journey Product and shall distribute and sell only the Journey Product bearing the applicable NDC Numbers. Blu shall promptly submit to the FDA and DailyMed the Journey Product label under the Blu ANDA . Journey is responsible for other drug listing of their private label Journey Product.

(b) All Journey Products will be private labeled by Blu with the names and trademarks chosen by Journey (the **"Journey Product Marks"**). As part of the manufacture of Journey Products, Blu shall package and label the Journey Products in accordance with the Specifications. Except as required to fulfill contractual obligations hereunder, Blu shall not apply any trademarks, trade names, logos or other branding items to packaging and labeling for the Products other than (i) Journey Product

Marks and (ii) the Blu trademarks set forth in the Specifications. Journey hereby grants Blu a nonexclusive license to use the Journey Product Marks to package and label the Journey Products in accordance with the Specifications. Blu shall not use the Journey Product Marks for any other purpose. Journey shall retain all right, title and interest in and to the Journey Product Marks. All use of the Journey Product Marks shall inure to the benefit of Journey. During the Term and thereafter, Blu shall not in any event (i) register or, any trademark which is confusingly similar to the Journey Product Marks or Journey or (ii) use the Journey Product Marks in any manner whatsoever which may jeopardize the significance, distinctiveness or validity thereof. Blu hereby recognizes the validity of the Journey Product Marks and the registrations thereof, and will not, during the Term or thereafter, contest the validity thereof During the Term and thereafter, Journey shall not in any event (i) register or, any trademark which is confusingly similar to the Blu Product Marks or Blu or (ii) use the Blu Product Marks in any manner whatsoever which may jeopardize the significance, distinctiveness or validity thereof. Journey hereby recognizes the validity of the Blu Product Marks and the registrations thereof, and will not, during the Term or thereafter, contest the validity thereof.

7.4 **Recalls**. Blu and Journey will each notify the other party promptly, and in any event within twenty-four (24) hours, if any batch of Journey Product is the subject of a recall or market withdrawal, and the parties will reasonably cooperate in the handling and disposition of such recall or market withdrawal; provided, however, in the event of a disagreement as to any matters related to such recall or market withdrawal, other than the determination of who will bear the costs as set forth in the immediately following sentence, Blu will have the final authority with respect to any product recall relating to the Journey Product. Blu will bear the cost of all recall or market withdrawals of Journey Product. Journey will maintain records of all sales of Journey Product and all customers sufficient to adequately administer a recall or market withdrawal for the longer of one (1) year after termination or expiration of this Agreement or the period required by Applicable Law or cGMP. Blu will be responsible for administering the physical aspects of any recalls or market withdrawals with respect to the Journey Product. Blu will provide Journey Product to Journey at Bill's expense to replace the recalled Journey Product.

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

7.5 **Complaints**. Journey and Blu will each notify the other of any product complaints made by customers that will or could cause an FDA "field alert" to be issued, within twenty-four (24) hours of the decision to file a field alert and will thereafter reasonably cooperate with each other relative to any investigation or inquiry that may be initiated by FDA with respect thereto. For purposes of clarification, the parties acknowledge that the foregoing complaint handling procedures will only apply to complaints which implicate the manufacturing, packaging, testing or storage of the Journey Product.

7.6 **Inspection by Journey**. Blu agrees that Journey and its respective agents (but no more than a total of three persons per inspection) shall have the right, pursuant to a reasonable confidentiality agreement with Blu, no more than once per calendar year (unless any such inspection reveals a material compliance issue, in which event Journey and its respective agents shall have the right to conduct such additional inspections during such calendar year as necessary to verify that such issue has been remedied), upon reasonable prior notice to Blu and during business hours, to inspect the portion of the facility where Journey Product is manufactured or stored as well as to observe the manufacturing of the foregoing, including inspection of (a) the raw materials used in the manufacture of the foregoing, (b) the holding facilities for such raw materials, (c) the equipment used in the manufacture of the foregoing, and (d) all material records reasonably relating to such manufacturing and the manufacturing facility, to the extent they relate to Journey Product. Following such inspection, Journey shall discuss its observations and conclusions with Blu. If the parties shall mutually agree that any corrective actions by Blu are necessary, Blu shall use 'Commercially Reasonable Efforts to implement such agreed corrective actions as soon as practicable.

7.7 **FDA Inspections**. In the event Blu's or Blu's Contract Manufacturer's manufacturing, packaging, testing or storage facility (or facilities) producing Journey Product is/are inspected by representatives of any federal agency in connection with Blu's or Blu's Contract Manufacturer's manufacture of the Journey Product, Blu will notify Journey within twenty four hours upon learning of such inspection, and will supply Journey with complete copies of any correspondence or communications or portions thereof which relate to the Journey Product.

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7.8 **Inquiries from Health Care Professionals**. Blu shall provide reasonable assistance to Journey in its preparation and filing with appropriate regulatory agencies (both federal and state agencies) related to reimbursement and health care insurance' filings required for the marketing and distribution of Journey Product in the Territory by Journey. Blu and Journey will work together in good faith to develop such necessary regulatory strategies, which may be required for purposes of this Agreement. In addition, Blu will provide Journey with copies (in electronic format if available) of those materials, which Blu uses to respond to inquiries regarding applicable products from consumers and health care professionals.

ARTICLE 8
FORCE MAJEURE

If either party is prevented from performing any of its obligations hereunder (except for any financial payments due hereunder) due to any cause that is beyond the non-performing party's reasonable control and could not have been avoided through the use of Commercially Reasonable efforts, including fire, explosion, flood, or other acts of God; acts, regulations, or laws of any government; court injunction or other court order; war, terrorist act or civil commotion; strike, lock-out or labor disturbances; or failure of public utilities or common carriers (each, a **"Force Majeure Event"**), such non-performing party will not be liable for breach of this Agreement with respect to such non-performance to the extent any such non-performance is due to a Force Majeure Event. Such non-performance will be excused for as long as such event will be continuing, provided that the non-performing party gives written notice to the other party of the Force Majeure Event within three (3) Business Days. Such non-performing party will exercise all reasonable efforts to eliminate the Force Majeure Event and to resume performance of its affected obligations as soon as practicable.

ARTICLE 9
INSURANCE

Each party shall procure and maintain at its cost insurance, including product liability insurance, adequate to cover its obligations hereunder and which are consistent with normal business practices of comparable companies with respect to similar obligations and liabilities, at all times during the Term. Each party will, on request, provide to the other party evidence of such insurance coverage. Upon execution of the agreement Journey will provide Blu with evidence of limits on premise liability, personal injury, advertising injury and Products Liability. Products Liability limits will be at a minimum of $[***]. Furthermore Journey will provide Blu with a certificate of insurance naming Blu as additional insured and must specifically list the Journey Product. Upon execution of the agreement Btu will provide Journey with evidence of limits on premise liability,

personal injury, advertising injury and Products Liability. Products Liability limits will be at a minimum of $[***]. Furthermore Blu will provide Journey with a certificate of insurance naming Journey as additional insured and must specifically list the Journey Product.

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ARTICLE 10
CONFIDENTIALITY

10.1 **Generally**. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, each party agrees that, during the Term and for five (5) years thereafter, such party (the **"Receiving Party"**) shall keep confidential and shall not publish or 'otherwise disclose and shall not use for any purpose other than as expressly provided for in this Agreement any information furnished to it by the other party (the **"Disclosing Party"**) pursuant to this Agreement (collectively, **"Confidential Information"**). The Receiving Party may use such Confidential Information only to the extent required to accomplish the purposes of this Agreement. The Receiving Party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own to ensure that its employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Confidential Information.

10.2 **Exceptions**. Confidential Information shall not include any information which the Receiving Party can prove by competent evidence: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a Third Party, as a matter of right and without restriction on disclosure; or (d) is independently discovered or developed by the Receiving Party without the use of Information provided by the Disclosing Party.

10.3 **Authorized Disclosure**. Each Receiving Party may disclose Confidential Information of the Disclosing Party as expressly permitted by this Agreement (including as reasonably necessary for the Receiving Party's performance of its obligations under this Agreement), or if and to the extent such disclosure is reasonably necessary in the following instances:

(a) complying with applicable court orders, applicable laws, rules or regulations, or the listing rules of any exchange on which the Receiving Party's or its Affiliate's securities are traded;

(b) enforcing the Receiving Party's rights under this Agreement;

(c) in the case of Journey, manufacturing, or having manufactured, the Product upon a Supply Interruption; provided that any such Receiving Party agrees to be bound by terms of confidentiality and non-use comparable in scope to those set forth in this Article 10;

(d) disclosure to the Receiving Party's Affiliates and to the Receiving Party's and its Affiliates' employees, consultants, contractors or agents who have a need to know such information in order for the Receiving Party to exercise its rights or fulfill its obligations under this Agreement, provided, in each case, that any such Affiliate, employee, consultant, contractor or agent agrees to be bound by teams of confidentiality and non-use comparable in scope to those set forth in this Article 10;

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(e) disclosure to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by obligations of confidentiality and non-use comparable in scope to those set forth in this Article 10, provided that the duration of such obligations may be shorter than the duration of those set forth in this Article 10.

Notwithstanding the foregoing, in the event the Receiving Party is required to make a disclosure of the Disclosing Party's Confidential Information pursuant to Section 10.3, Section 10.5 or Section 10.6, it will, except where impracticable, give reasonable advance notice to the Disclosing Party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as the Receiving Party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the Receiving Party agrees to take all reasonable action to avoid disclosure of Confidential Information hereunder.

10.4 **Press Releases**. Except as required by applicable securities laws or the listing rules of any stock exchange on which securities issued by a party or its Affiliates are traded, neither party shall make any public announcement concerning this Agreement or the terms or subject matter hereof without the prior written consent of the other, which shall not be unreasonably withheld or delayed. In the event of a required public announcement, to the extent practicable under the circumstances, the party making such announcement shall use Commercially Reasonable efforts to provide the other party with a copy of the proposed text of such announcement sufficiently in advance of the scheduled release to afford such other party a reasonable opportunity to review and comment upon the proposed text, unless the proposed text is substantially the same as that used in any prior public disclosure, press release or public statement made in accordance with this Section 10.4.

10.5 **Filing of this Agreement**. The parties shall coordinate in advance with each other in connection with the filing of this Agreement (including redaction of certain provisions of this Agreement) with any securities authority or with any stock exchange on which securities issued by a party or its Affiliate are traded, and each party will use reasonable efforts to seek confidential treatment for the terms proposed to be redacted; provided that each party will ultimately retain control over what information to disclose to any securities authority or stock exchange, as the case may be, and provided further that the parties will use their reasonable efforts to file redacted versions with any governing bodies which are consistent with redacted versions previously filed with any other governing bodies. Other than such obligation, neither party (nor any of its Affiliates) will be obligated to consult with or obtain approval from the other party with respect to any filings to any securities authority or stock exchange.

10.6 **Use of Name**. Neither party shall use the name, insignia, symbol, trademark, trade name or logotype of the other party (or any abbreviation or adaptation thereof) in any publication, press release or marketing and promotional material without the prior written approval of such other party in each instance, which approval shall not be unreasonably conditioned, withheld or delayed. The restrictions imposed by this Section 10.6 shall not prohibit either party from making any disclosure (a) identifying the other party as a counterparty to this Agreement to its investors, lenders or other financing sources, (b) that is required by Applicable Law or the requirements of a national securities exchange or another similar regulatory body (provided, that any such disclosure shall be governed by this Article 10), (c) that is necessary for the performance by of its obligations or exercise of its rights as contemplated by this Agreement or (d) with respect to which written consent has previously been obtained.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1 **Mutual Representations and Warranties**. Each party hereby represents and warrants to the other that, as of the Effective Date: (a) it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation, and has full corporate or other power and authority to enter into this Agreement and to carry out the provisions hereof; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person or persons executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate or partnership action; and (c) this Agreement is legally binding upon it, enforceable in accordance with its terms, and does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any Applicable Laws or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

11.2 **Blu Representations and Warranties**. Blu represents, warrants and covenants to Journey that:

(a) all Journey Product: (i) at the time of delivery, will conform to the applicable Product Requirements; (ii) will have been manufactured, tested, packaged and released in accordance with cGMP, Applicable Laws and Blu's obligations under the Quality Agreement; and (iii) will not be adulterated or misbranded or otherwise defective within the meaning of the ACT or any other Applicable Laws;

(b) Blu has the full right, power and authority to grant to Journey the rights and licenses granted to Journey hereunder;

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(c) Blu has not granted, and it shall not grant during the Term, to any Third Party any license or other right to distribute branded 50mg tablets and/or 100mg tablets of Doxycycline Hyclate for human use;

(d) the Blu ANDA has been approved by the FDA;

(e) Blu will maintain the Blu ANDA in effect during the Term and will not take any action that will adversely affect the Blu ANDA or Journey's rights to market, promote, sell and distribute the Journey Product thereunder;

(f) Blu solely owns all right, title and interest in and to the Blu ANDA;

(g) Blu (i) is not a party to any legal action, suit or proceeding relating to the Journey Product or, except as set forth in Schedule C, Blu ANDA; and (ii) has not received any written communication from any Third Party (including the FDA or any other regulatory or governmental authority) threatening any action, suit or proceeding relating to the Blu ANDA or Journey Product;

(h) Blu has and will convey to Journey good title to Journey Products free and clear of any security interests, liens, or other encumbrances of any kind or character; and

(i) Blu shall comply with all applicable laws, consent decrees, and regulations of any Federal, state, or other governmental authority.

11.3 **Journey Representations and Warranties**. Journey represents, warrants and covenants to Blu that:

(a) Journey has the full right, power and authority to enter into this Agreement;

(b) Journey (i) is not a party to any legal action, suit or proceeding impacting its ability to sell the Journey Product; and (ii) has not received any written communication from any Third Party (including the FDA or any other regulatory or governmental authority) threatening any action, suit or proceeding impacting its ability to sell the Journey Product;

(c) Journey shall comply with all applicable laws, consent decrees, and regulations of any Federal, state, or other governmental authority.

(d) Journey will use Commercially Reasonable efforts to market and sell the Journey Products.

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COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

11.4 **Debarment**. The parties each hereby represent and warrant to the best of their knowledge after reasonable investigation, that neither it, nor any of its employees or agents who will participate in the performance of this Agreement, have been, are currently, or are the subject of a proceeding that could lead to their or such employees or agents becoming, as applicable, a Debarred Entity, Debarred Individual, Excluded Entity, Excluded Individual, Convicted Entity, or Convicted Individual. The parties further covenant, represent and warrant that, if during the Term of this Agreement it becomes aware that, it, or any of its employees or agents participating in the performance of their obligations hereunder, become or are the subject of a proceeding that could lead that party, employee or agent becoming, as applicable, a Debarred Entity, Debarred Individual, Excluded Entity, Excluded Individual, Convicted Entity or Convicted Individual, then it will immediately notify the other party. In the event of such a notice, the parties will promptly discuss necessary measures to avoid such a circumstance from affecting a party's performance under this Agreement

11.5 **LIMITATION OF LIABILITY**. EXCEPT FOR (1) LIABILITY FOR BREACH OF ARTICLE 7, (ii) LIABILITY FOR A BREACH BY BLU OR ITS AFFILIATES OF SECTION 2.2 AND (iii) ANY DAMAGES ARISING FROM A PARTY'S WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, INCLUDING LOST REVENUE AND LOST PROFITS, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY, IN CONNECTION WITH THIS AGREEMENT; provided, however, that this Section 11.5 shall not be construed to limit either party's indemnification obligations under Article 12.

ARTICLE 12
INDEMNIFICATION

12.1 **Indemnification by Blu**. Blu will indemnify and hold harmless Journey, its Affiliates, and each of their respective current or former directors, officers, employees, agents and representatives (the **"Journey Indemnified Parties"**) from and against any and all damages, liabilities, claims, costs, charges, judgments and expenses (including all reasonable attorneys' fees and expenses) (collectively **"Damages"**) from third parties that may be sustained, suffered or incurred by the Journey Indemnified Parties, arising from or in connection with (i) the breach by Blu of any warranty, representation, covenant or agreement made by Blu in this Agreement, or (ii) the intentional misconduct or gross negligence of any Blu Indemnified Party in connection with this Agreement or the Journey Product, or (iii) a breach of Blu's responsibilities pursuant to the Quality Agreement, or (iv) Blu or any of Blu's Affiliates' infringement of the intellectual property rights of a Third Party, except, in the case of clauses (i)-(iv) immediately above, for Damages for which Journey has an obligation to indemnify the Blu Indemnified Parties pursuant to Section 12.2 as to which Damages each of Blu and Journey shall indemnify the other party to the extent of its respective liability for such Damages.

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12.2 **Indemnification by Journey**. Journey will indemnify and hold harmless Blu, its Affiliates, and each of their respective current or former directors, officers, employees, agents and representatives (the **"Blu Indemnified Parties"**) from and against any and all Damages from third parties that may be sustained, suffered or incurred by the Blu Indemnified Parties, arising from or in connection with (i) the breach by Journey of any warranty, representation, covenant or agreement made by Journey in this Agreement; (ii) Journey's or its distributors' promotion, marketing, manner of distribution and commercialization of the Journey Products, except to the extent that any of the foregoing arises out of or results from the breach of this Agreement by Blu or the negligence or willful misconduct of Blu; (iii) the intentional misconduct or gross negligence of any Journey Indemnified Party in connection with this Agreement or the Journey Product, or (iv) a breach of Journey's responsibilities pursuant to the Quality Agreement, except, in the case of clauses (i)-(iv) immediately above, for Damages for which Blu has an obligation to indemnify the Journey Indemnified Parties pursuant to Section 12.1 as to which Damages each of Journey and Blu shall indemnify the other party to the extent of its respective liability for such Damages.

12.3 **Claims**. Each Blu Indemnified Party and Journey Indemnified Party (**"Indemnified Party"**) agrees to give the indemnifying party prompt written notice of any matter upon which such Indemnified Party intends to base a claim for indemnification (an **"Indemnity Claim"**) under this Article 12. In the event that an Indemnity Claim is brought or made against both parties, then each party will have the right to be represented by counsel at its own expense. Notwithstanding the foregoing, in the event that such Indemnity Claim relates solely to causes covered by Section 12.1 hereof, then Blu will assume full control of the defense of such Indemnity Claim including without limitation the settlement thereof All expenses of such suit, claim or proceeding, including the settlement and the payment of any damages thereof, will be borne solely by Blu. Notwithstanding the foregoing, in the event that such Indemnity Claim relates solely to causes covered by Section 12.2 hereof, then Journey will assume full control of the defense of such Indemnity Claim including without limitation the settlement thereof. All expenses of such suit, claim or proceeding, including the settlement and the payment of any damages thereof, will be borne solely by Journey. The Indemnified Party will make available to the indemnifying party and its counsel, at all reasonable times during normal business hours, all books and records of the other party relating to such suit, claim or proceeding, and each party will render to the other party such assistance as it may reasonably require in order to ensure proper and adequate defense of any such suit, claim or proceeding. The indemnifying party will obtain the written consent of the Indemnified Party prior to settling, ceasing to defend or otherwise disposing of any Indemnity Claim if as a result thereof the Indemnified Party would become subject to injunctive or other equitable relief or the business of the Indemnified Party would be adversely affected in any manner whatsoever.

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ARTICLE 13
INFORMAL DISPUTE RESOLUTION; EXCLUSIVE JURISDICTION

13.1 **Informal Dispute Resolution**. Unless otherwise expressly provided for herein, any claim or controversy between the parties arising out of or relating to the execution, interpretation and performance of this Agreement (including the validity, scope and enforceability of this provision) will be identified in writing and presented to the other party. Within twenty (20) days after delivery of such notice of dispute, the President of Blu and the President of Journey (or another executive of a party or an Affiliate designated by a party's respective President) (the **"Designated Officers"**) will meet (either in person or via telephone conference) at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute in good faith. All reasonable requests for information made by one party to another will be honored. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If such Designated Officers cannot resolve such dispute within ten (10) days after such initial meeting, then each party reserves its right to any and all remedies available under law or equity with respect to any other dispute. Notwithstanding anything to the contrary herein, each party may seek immediate or other equitable relief against the other party at any time to enforce their proprietary rights in confidential information or other intellectual property rights.

13.2 **Exclusive Jurisdiction and Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to the conflict of law principles thereof. Each of the parties hereto irrevocably consents to the sole and exclusive jurisdiction and venue of the state and federal courts located in Delaware in all matters arising out of this Agreement and expressly waives all objections to jurisdiction and venue in such state and federal courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, by telegram, by facsimile, by first class mail, or by any other way permissible under applicable laws and shall be deemed effectively given upon receipt. The parties agree that, with respect to any action arising out of this Agreement, A RIGHT TO TRIAL BY JURY IS HEREBY WAIVED.

ARTICLE 14
MISCELLANEOUS

14.1 **Amendment**. The parties may add additional products to this Agreement from time to time. The parties will prepare a Schedule and attach the new Schedule as an amendment to the Agreement, signed and dated by both parties. No modification, change or amendment to this Agreement will be effective unless in writing signed by each of the parties hereto.

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14.2 **Relationship of the Parties**. The relationship of Journey and Blu established by this Agreement is that of independent contractors, and nothing contained herein will be construed to (1) give either party any right or authority to create or assume any obligation of any kind on behalf of the other, or (ii) constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking.

14.3 **Third Party Rights**. Nothing in this Agreement will be deemed to create any Third Party beneficiary rights in or on behalf of any other person.

14.4 **Entire Agreement**. It is the mutual desire and intent of the parties to provide certainty as to their respective future rights and remedies against each other by defining the extent of their mutual undertakings as provided herein. The parties have, in this Agreement (including the Schedules and Exhibits hereto), and the Quality Agreement referred to herein, incorporated all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither party makes any covenant or other commitment to the other concerning its future action. Accordingly, this Agreement and the Schedules and Exhibits hereto and the Quality Agreement referred to herein (i) constitute the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no promises, representations, conditions, provisions or teens related thereto other than those set forth in this Agreement; and (ii) supersedes all previous understandings, agreements and representations between the parties, written or oral.

14.5 **Headings and Examples**. The Article and Section headings contained in this Agreement and any examples attached hereto are for reference purposes only and will not affect in any way the meaning and interpretation of this Agreement.

14.6 **Notices**. All notices and other communications hereunder will be in writing, will be delivered personally, or sent by national overnight delivery service or postage pre-paid registered or certified U.S. mail, and will be deemed given: when delivered, if by personal delivery or overnight delivery service; or if so sent by U.S. mail, five (5) Business Days after deposit in the mail, and will be addressed:

If to Journey:
Journey Medical Corporation
9237 E. Via de Ventura Blvd
Suite 135
Scottsdale AZ 85258
Attention: President

If to Blu:
Blu Caribe, Inc.
[***]

or to such other place as either party may designate by written notice to the other in accordance with the terms hereof.

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14.7 **Failure to Exercise**. The failure of either party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such party thereafter to enforce each such provision, nor will any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. Remedies provided herein are cumulative and not exclusive of any remedies provided at law.

14.8 **Assignment**. This Agreement may not be assigned by either party without the prior written consent of the other, except that either party may assign its rights and/or obligations hereunder to any successor in interest by way of merger, acquisition or sale or transfer of all or substantially all of its business or assets to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

14.9 **Severability**. In the event that any one or more of the provisions (or any part thereof) contained in this Agreement or in any other instrument referred to herein, will, for any reason, be held to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement will remain in full force and effect. If any of the terms or provisions of this Agreement are in conflict with any applicable statute or rule of law, then such terms or provisions will be deemed inoperative to the extent that they may conflict therewith and will be deemed to be modified to conform with such statute or rule of law. In the event that the terms and conditions of this Agreement are materially altered as a result of this Section 14.9, the parties will renegotiate the terms and conditions of this Agreement to resolve any inequities.

14.10 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

14.11 **Survival**. Articles 1, 6, 10, 12, 13 and 14, Sections 5.4 and 11.5, and any other terms of this Agreement which by their nature would continue beyond the termination, cancellation, or expiration of this Agreement, will survive the termination of this Agreement in accordance with the respective terms thereof

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the Parties have caused this License and Supply Agreement to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

JOURNEY MEDICAL CORPORATION

By: _____

Name: _____

Title: _____

BLU CARIBE, INC.

By: _____

Name: _____

Title: _____

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

IN WITNESS WHEREOF, the Parties have caused this License and Supply Agreement to be executed and delivered by their respective duly authorized officers as of the day and year first above written.

JOURNEY MEDICAL CORPORATION

By: /s/ _____

Name: _____

Title: _____

BLU CARIBE, INC.

By: /s/ _____

Name: _____

Title: _____

Exhibit 10.8

FIRST AMENDMENT TO
LICENSE AND SUPPLY AGREEMENT

This First Amendment (the "**Amendment**") to that certain License and Supply Agreement, dated March 10, 2015, (the "**Agreement**") by and between **JOURNEY MEDICAL CORPORATION**, a corporation organized and existing under the laws of Delaware ("**Journey**") and **BLU CARIBE, INC.**, a corporation organized and existing under the laws of Puerto Rico ("**Blu**"), is made effective as of August 26, 2015 (the "**Amendment Effective Date**"). Blu and Journey are each referred to individually as a "**Party**" and together as the "**Parties**."

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is acknowledged by both Parties, the Parties agree as follows:

1. **Definitions.** Unless otherwise defined in this Amendment, initially capitalized terms used herein shall have the meanings given to them in the Agreement.

2. **Section 5.1.** Section 5.1 of the Agreement is hereby amended to add the following new Section 5.1(c):

> (c) Upon or following Blu filing with the FDA a Prior Approval Supplement that (i) is for the 50mg version of the Journey Product and (ii) has been pre-approved in writing by Blu ("**PAS**"), Journey will pay to the FDA on behalf of Blu the respective filing fee in the amount of $[***] (the "**Filing Payment**"). The Filing Payment will be creditable against Journey Revenue Share payments due to Blu under this Agreement."

3. **No Other Modifications.** Except as specifically set forth in this Amendment, the terms and conditions of the Agreement shall remain in full force and effect. No waiver of the performance of any obligation under this Amendment shall be effective unless it has been given in writing and signed by the Party giving such waiver. No provision of this Amendment may be amended or modified other than by a written document signed by authorized representatives of each Party.

   THIS AMENDMENT AND THE AGREEMENT AS AMENDED BY THIS AMENDMENT SET FORTH THE ENTIRE AGREEMENT AND UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF, AND SUPERCEDES ALL PRIOR DISCUSSIONS, AGREEMENTS AND WRITINGS IN RELATION THERETO.

4. **Miscellaneous.** This Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Amendment shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to any rules of conflict of laws.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties intending to be bound have caused this Amendment to be executed by their duly authorized representatives.

JOURNEY MEDICAL CORPORATION

By: /s/
Name:
Title:

BLU CARIBE, INC.

By: /s/
Name:
Title:

Exhibit 10.9

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

By and between

JOURNEY MEDICAL CORPORATION

and

SUN PHARMACEUTICAL INDUSTRIES, INC.

Dated: August 31, 2018

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated August 31, 2018 ("Effective Date"), is entered into by and between Journey Medical Corporation, a Delaware corporation having its principal place of business at 9237 Via De Ventura Suite 135, Scottsdale, AZ 85258 (the " Buyer") and Sun Pharmaceutical Industries, Inc, a Michigan corporation, located at [***] (the "Seller"). Buyer and Seller are referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Seller owns and possesses the Transferred Assets (as defined herein).

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller all of Seller's right, title and interest in the Transferred Assets (as defined herein) with respect to the Territory upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

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

1.1 "Action or Proceeding" means any action, suit, proceeding, arbitration, court order, inquiry, hearing, assessment with respect to fines or penalties or litigation (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

1.2 "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person from time to time. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of such Person (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity).

1.3 "Ancillary Agreements" means, other than this Agreement, all other agreements, certificates and documents signed and delivered by any party in connection with this Agreement or the transactions contemplated hereby.

1.4 "Assumed Liabilities" shall have the meaning set forth in Section 2.6.

1.5 "Business Day" means a day other than a Saturday, Sunday, bank or other public holiday in the State of New York, USA.

1.6 "Claim Notice" shall have the meaning set forth in Section 7.3(a).

1.7 "Closing" shall have the meaning set forth in Section 3.1.

1.8 "Closing Date" shall have the meaning set forth in Section 3.1.

1.9 "Commercially Reasonable Efforts" shall mean the diligent, good faith efforts, consistent with general practices and standards in the pharmaceutical industry with those used in the pharmaceutical industry of similar size and with similar resources of Buyer as of the date hereof, taking into account all scientific, commercial and other relevant factors, would normally use to accomplish a similar objective for its product having similar technical and regulatory factors (including safety and efficacy), similar expected and actual time and cost to commercialize, similar commercial and profit potential, competitive landscape, a similar proprietary position and strategic value, and that is at a similar stage in its product life cycle as the applicable Product, in each case based on existing and reasonably anticipated future conditions. Commercially Reasonable Efforts shall be determined on a market-by-market basis for the Product.

1.10 "Consent" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

1.11 "Disclosure Schedules" means the disclosure schedule delivered by the Seller to the Buyer simultaneously with the execution of this Agreement and attached herewith as Schedule 1.11.

1.12 "Encumbrance" means any charge, equitable interest, hypothecation, lien, mortgage, pledge, security interest or other encumbrance of any kind known to the

Seller prior to the Effective Date.

1.13 "Excluded Liabilities" shall have the meaning set forth in Section 2.6.

1.14 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.15 "FDA Act" means the U.S. Federal Food, Drug and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder.

1.16 "GAAP" means general accounting principles in United States of America.

1.17 "Governmental Authority" means any court, tribunal, governmental agency, commission, authority, department, ministry, official or other instrumentality of any state or federal government or any country (including any political subdivision thereof) or association of countries, including, without limitation, the FDA.

1.18 "Indemnified Party" shall have the meaning set forth in Section 7.3(a).

1.19 "Indemnifying Party" shall have the meaning set forth in Section 7.3(a).

1.20 "Indemnity Claims" shall have the meaning set forth in Section 7.3(a).

1.21 "Intellectual Property" means, (a) all trademarks, service marks, trade dress, logos, trade names, and corporate names solely and exclusively related to the distribution of the Product in the Territory as listed in Schedule 1.21(a), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; and (b) the domain name, www.exelderm.com and the digital graphics files supporting such site.

1.22 "Inventory" means all stock of Product that are solely maintained, held, or stored by or on behalf of the Seller as on the Closing Date for the sale, distribution and commercialization in the Territory.

1.23 "Inventory Amount" shall have the meaning set forth in Section 4.2.

1.24 "Inventory Statement" shall have the meaning set forth in Section 4.2.

1.25 "Knowledge" means (a) in the case of Seller, the actual knowledge of the applicable Persons set forth on Schedule 1.25, and (b) in the case of Buyer, the actual knowledge of the Buyer.

1.26 "Laws" means any federal, state, local, foreign or multinational laws, statutes, ordinances, regulations, rules, standards, codes, orders, writs, injunctions, decrees, arbitration awards, agency or regulatory requirements or licenses or permits of any kind whatsoever of any Governmental Authority, all as amended from time to time

1.27 "Legal Requirement" means any statute, law, ordinance, regulation, order or rule of any Governmental Authority.

1.28 "Liabilities" shall mean, collectively, any debt, obligation, duty, guaranty, claim, loss, damage, deficiency, cost, expense, fees, commitment, obligation, responsibility, or liability of any nature (including such debt, obligation, duty, liability, or the like, that is primary or secondary, direct, absolute or contingent, or known or unknown) regardless of whether such debt, obligation, duty, liability, or the like, would be required to be disclosed on a balance sheet, and regardless of whether such debt, obligation, duty, liability, or the like, is immediately due and payable.

1.29 "Losses" shall mean any and all losses, damages, obligations, liabilities, Taxes, fines, fees, costs, expenses, lost profits, diminution in value, penalties, interest, awards, judgments, claims, demands, actions, suits and settlements of any kind, including attorneys' and consultants' fees and expenses and other costs and expenses.

1.30 "Marketing Collateral" shall mean the materials solely and exclusively related to the Product as set forth in Schedule 1.30.

1.31 "NDA" the New Drug Application (as defined in and regulated under the FDA Act), including all applications therefor, and all amendments, modifications, supplements and updates thereto.

1.32 "Net Sales" means for any period, the aggregate gross amounts invoiced by Buyer, its Affiliates or distributors for sales of the Product in bona fide, arms-length transactions in the

Territory for use in the Territory, less following deductions allowed or accrued by using GAAP to the extent separately invoices or displayed in the invoice:

(a) credits or allowances actually granted for damaged Product, returns, rejections, withdrawals or recall of Product or failure to supply, chargebacks, price adjustments and billing errors or on account of retroactive price reductions affecting the Product;

(b) governmental rebates, patient vouchers or coupons granted to managed health care organizations; pharmacy benefit managers; federal, state/provincial, local and other governments, their agencies and purchasers and reimbursers;

(c) normal and customary trade, cash and quantity discounts, allowances and credits; and

(d) sales taxes, VAT and other taxes and duties applied to the sale of Product to the extent included in the gross amount invoiced.

1.33 "Notice Period" shall have the meaning set forth in Section 7.3(b).

1.34 "Permitted Encumbrance" means (i) any Encumbrance for Taxes, assessments and other governmental charges that are not yet due and payable, (ii) with respect to licenses, permits or contracts, any restrictions, obligations, limitations or other Encumbrances contained in such license, permit or contract or existing at Law or under the regulatory regime pursuant to which such permit or license is granted that do not materially impair the current use of the Product, or (iii) with respect to the NDA, any restrictions, obligations, limitations or other Encumbrances contained in such NDA or existing at Law or under the regulatory regime pursuant to which such NDA is granted

that do not materially impair the current use of the Product.

1.35 "Person" means any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, or other entity or Governmental Authority.

1.36 "Product" means Exelderm (Cream & Solution) 1% sulconazole nitrate.

1.37 "Purchase Price" shall have the meaning set forth in Section 4.1.

1.38 "Royalty" or "Royalties" shall have the meaning set forth in Section 4.3.

1.39 "Royalty Term" means the time period commencing on the Effective Date and ending on December 1st, 2023 during which the Royalty is payable by the Buyer to the Seller.

1.40 "Tax" or "Taxes" means any taxes or similar assessments of any kind whatsoever including, but not limited to income, franchise, trade, capital, withholding, payroll, unemployment insurance, social security, gross receipts, sales and use, value added, excise, real property and personal property taxes, together with all interest, penalties and additions imposed with respect to any such taxes.

1.41 "Territory" means the United States of America and all of its territories and possessions.

1.42 "Third Party" means any Person other than a Party or any of their respective Affiliates.

1.43 "Transferred Assets" shall have the meaning set forth in Section 2.1.

1.44 "Upfront Payment" shall have the meaning set forth in Section 4.1.

ARTICLE 2
PURCHASE AND SALE OF THE TRANSFERRED ASSETS

2.1 Transfer of Assets. Upon the terms and subject to the conditions set forth herein, Seller hereby sells, conveys, transfers, assigns and delivers to Buyer, and Buyer hereby purchases from Seller all of Seller's right, title and interest in and to the following assets with respect to the Territory to the extent existing and controlled by the Seller (collectively, the "Transferred Assets"), free and clear of all Encumbrances (except Permitted Encumbrances):

(a) the Product NDA;

(b) the Inventory; and

(c) all Intellectual Property related to the Product.

2.2 The Parties hereby agree and acknowledge that the Product NDA and the Intellectual Property related to the Product shall be transferred by the Seller to the Buyer on the Closing Date and the Inventory shall be transferred by the Seller to the Buyer in accordance with Section 4.2 below.

2.3 License to Marketing Collaterals. Solely to the extent necessary for Buyer to market the Product in the Territory, Seller hereby grants to Buyer a limited, non-exclusive, non-transferable and royalty free license to Seller's rights in the Marketing Collaterals. Upon the terms and subject to the conditions set forth herein, after the Closing, Seller shall promptly deliver to Buyer the Marketing Collaterals. For the avoidance of doubt, nothing herein shall be construed as a grant or license of any rights to any Sun trademark, service mark, trade dress, logo, trade name or corporate name similar or related thereto other than those specifically set forth in Schedule 1.21(a).

2.4 The Buyer acknowledges and agrees that Seller may retain for archival purposes and for purposes of complying with the applicable Laws and for legal and regulatory purposes as sellers of pharmaceutical products, one copy of all or any part of the documentation that Seller delivers to the Buyer pursuant to this Section 2.1.

2.5 Other than the Transferred Assets set forth in Section 2.1, the Buyer expressly understands and agrees that it is not purchasing or acquiring, and the Seller is not selling or assigning, any other assets or properties of the Company not specifically related to the Product, including but not limited to Seller's trademarks, trade dress, logos, corporate designs, and the like that are incorporated in the Marketing Collateral and in the digital graphics files forming part of the Intellectual Property, and all such other assets and properties shall be excluded from the Transferred Assets.

2.6 Liability. From and after the Closing Date, Buyer shall assume, be responsible for and pay, perform and discharge when due, and, if necessary, reimburse Seller for all matters and Liabilities (including intellectual property infringement or misappropriation claims or actions or any other claims or actions brought by any Third Party) within the Territory arising out of or relating to the Product and the Transferred Assets for the period after the Closing Date ("Assumed Liabilities"). For avoidance of doubt, with respect to the Inventory, the Buyer shall assume the Assumed Liabilities from and after the date of transfer of Inventory under Section 4.2. It is hereby clarified that Buyer shall not assume and be responsible for the Liabilities arising out of or in connection with the use and ownership of the Transferred Assets which have resulted from any acts or omissions of the Seller for the period prior to the Closing Date (and with respect to the Inventory, prior to the date of transfer of the Inventory under Section 4.2) ("Excluded Liabilities").

ARTICLE 3
CLOSING & CONDITIONS PRECEDENT

3.1 Closing. The consummation of the purchase and sale of the Transferred Assets contemplated hereby (the "Closing") will take place on the date of receipt of the Upfront Payment by the Seller pursuant to Section 4.1(i) or, if all the conditions set forth in Sections 3.2(a) and 3.2(b) are not then satisfied or waived, the first such Business Day thereafter on which they are waived or satisfied, and "Closing Date" shall mean the date upon which Closing occurs.

3.2 Conditions to Closing.

(a) Conditions to the Seller's Obligations. The obligation of the Seller to consummate the transactions contemplated by this Agreement at Closing is

subject to the fulfillment of each of the following conditions (any or all of which may be waived in writing in whole or in part by the Seller):

(i) Representations. The representations and warranties of Buyer made in Section 5 of this Agreement shall be true and correct as of the Closing Date. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Buyer by the time of the Closing. Buyer shall have delivered to Seller a certificate dated the Closing Date and signed by an authorized officer of Buyer to the effect that the conditions specified in this Section 3.2(a) are satisfied.

(ii) Consents. The Buyer shall have received all Consents as required in order to assign to the Buyer all rights of the Seller to the Transferred Assets; and

(iii) No Order. There shall not be in effect on the Closing Date any judgment, order, decree, ruling or charge restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

(b) Conditions to the Buyer's Obligations. The obligation of the Buyer to consummate the transactions contemplated by this Agreement at Closing is subject to the fulfillment of each of the following conditions (any or all of which may be waived in writing in whole or in part by the Buyer):

(i) Representations. The representations and warranties of Seller made in Section 5 of this Agreement shall be true and correct as of the Closing Date. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller by the time of the Closing. Seller shall have delivered to Buyer a certificate dated the Closing Date and signed by an authorized officer of Seller to the effect that the conditions specified in this Section 3.2(b) are satisfied.

(ii) Consents. The Seller shall have received all Consents as required in order to assign to the Buyer all rights of the Seller to the Transferred Assets; and

(iii) No Order. There shall not be in effect on the Closing Date any judgment, order, decree, ruling or charge restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement.

3.3 Closing Deliverables. At the Closing, the following shall be delivered:

(a) Buyer shall deliver to the Seller

(i) by wire transfer to a bank account designated in writing by Seller in US Dollars, immediately available funds in an amount equal to the sum of the Upfront Payment; and

(ii) the certificate required to be delivered by Buyer under Section 3.2(a) duly executed by an authorized officer of Buyer.

(b) Seller shall deliver to the Buyer the certificate required to be delivered by Seller under Section 3.2(b) duly executed by an authorized officer of Seller.

ARTICLE 4
PRICE & TERMS

4.1 Purchase Price. As consideration for the Transferred Assets, Buyer shall pay to the Seller a non-refundable and non-creditable payment of: (i) One Million and Two Hundred Thousand U.S. Dollars (U.S. $1,200,000) within sixty (60) days from the Effective Date ("Upfront Payment"), (ii) the one-time milestone payment of Four Hundred Thousand U.S. Dollars (U.S. $400,000) within forty-five (45) days following the achievement of the Net Sales of the Product for the calendar year being equal to or more than [***] U.S. Dollars (U.S. $[***]); (iii) Inventory Amount as set forth in Section 4.2 below and (iii) Royalty, as set forth in Section 4.3 below (collectively, with (i), (ii) and (iii) "Purchase Price"). The Buyer will pay the Purchase Price to the Company by wire transfer of federal funds pursuant to written instructions delivered by the Seller to the Buyer.

4.2 Inventory. Seller shall prepare a statement for the Inventory it will possess on the Effective Date ("Inventory Statement") and provide such statement to the Buyer at least two (2) Business Days prior to the Effective Date. In consideration of the Seller transferring the Inventory to the Buyer, Buyer shall pay to Seller an amount equivalent to the value of the total quantity of Inventory mentioned in the Inventory Statement (i.e. USD per unit multiplied by total quantity of the Inventory) ("Inventory Amount"). Buyer shall pay the Inventory Amount within ten (10) Business Days from the date of receipt of the Inventory Statement. For clarity, Seller is not required to invoice Buyer for the payment of the Inventory Amount. Seller shall deliver the Inventory as per Ex-Works (Incoterms 2010) Cranbury, New Jersey. Parties hereby agree and acknowledge that the Inventory will be sold by Buyer with the existing label, however Buyer shall make commercially reasonable efforts to change the labelling as soon as practicable. Seller shall reasonably assist the Buyer in handling any customer complaints/queries. Notwithstanding anything contained herein, Buyer hereby agrees and acknowledges that it shall be solely responsible and liable for any and all claims or actions arising out of or in connection with the handling, storing, marketing, promoting, distributing and selling of the Inventory. Seller shall make the Inventory available to Buyer within two (2) Business Days following the Effective Date.

4.3 Royalty. During the Royalty Term, the Buyer shall pay to Seller quarterly a royalty of [***]% of the Net Sales of the Product in the Territory (the "Royalty"), payable within forty-five (45) days following the end of the applicable calendar quarter. In the event the Net Sales of the Product is equal to or more than [***] U.S. Dollars (U.S. $[***]) in a fiscal year, thereafter the Royalty shall become [***]% of Net Sales. The Buyer agrees to use Commercially Reasonable Efforts to commercialize the Product in a manner which will generate maximum Net Sales in the Territory.

4.4 Audit Right. Upon not less than five (5) Business Days' written notice, Seller shall have the right to audit the books and records of Buyer to the extent relating to Net Sales for the purposes of determining the correctness of Buyer's computation and payment of the Royalty. Such audit shall be conducted during normal business hours by an accountant selected by Seller. All costs and expenses for conducting the audit shall be borne by the Seller, except that if the audit report shows that the Royalties were underpaid or overpaid by more than two percent (2%), then all costs and expenses for conducting the audit shall be borne by Buyer. Payment of any underpaid or overpaid Royalties, along with the costs and expenses for conducting the audit, shall be paid with or deducted from the immediately following Royalty payment, as applicable. The right to audit under this Section by the Seller shall survive termination or expiration of this Agreement by a period of one (1) year therefrom.

4.5 Taxes and Fees. Buyer shall be responsible for and pay all Taxes imposed in connection with the transactions provided for in this Agreement (excluding any income tax and capital gains tax on Seller), including without limitation sales taxes, value added taxes, transfer taxes and recording fees, if any, imposed upon the transfer of the

Transferred Assets, and any withholding taxes.

4.6 Late Payment. The Company shall be entitled to charge [***]% interest per annum on any amounts overdue, from the due date for payment until receipt by the Company of the full amount, without prejudice to any other right or remedy of the Company.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Seller's Warranties. Except as set forth on the Disclosure Schedule, as on the Effective Date, Seller represents and warrants to Buyer as follows:

(a) Organization and Authority. Seller is validly existing and in good standing under the applicable Laws, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been, duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Seller enforceable in accordance with their terms.

(b) Title. Seller owns and has good and valid title to the Transferred Assets, free and clear of all Encumbrances. There are no adverse claims of ownership to the Transferred Assets and, to the Seller's Knowledge, Seller has not received written notice that any individual or entity has asserted a claim of ownership or right of possession or use in or to any of the Transferred Assets. At Closing, Buyer will acquire from Seller good and valid title to the Transferred Assets.

(c) Litigation; Legal Compliance.

(i) There is no material Action or Proceeding pending or, to Seller's Knowledge, threatened, with respect to the Transferred Assets, that affects or, if successful, would affect the validity of this Agreement or any action taken or to be taken by the Seller in connection herewith, or which individually or in the aggregate, would materially impair the ability of Seller to perform its obligations hereunder or to consummate the transactions contemplated by this Agreement or the Ancillary Agreements.

(ii) Neither Seller nor any officer, employee, agent, contractor or distributor of Seller has committed or been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar applicable law. Neither Seller nor any officer, employee, agent, contractor or distributor of Seller has been convicted of any crime or engaged in any conduct for which such person could be excluded from participating in federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar law. No claims, actions, proceedings or investigations that could reasonably be expected to result in a debarment or exclusion are pending or threatened against Seller or any of its directors, officers, employees or agents. Seller has never been: (i) debarred or (ii) convicted of a crime for which a person can be debarred under Section 306(a) of the Generic Drug Enforcement Act of 1992 (Section 306 (a) or (b)), and Seller has never been and, to Seller's Knowledge, none of its employees, Affiliates or agents has ever been: (i) threatened to be debarred or (ii) indicted for a crime or otherwise engaged in conduct for which a person can be debarred, under Section 306(a) or (b) of the Generic Drug Enforcement Act of 1992.

(iii) Seller has provided to Buyer copies of all written communications to or from any Governmental Authority and associated with the Product, including, without limitation, any written communication to or from the FDA.

(iv) The Seller possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities, required by applicable provisions of Laws.

(d) No Conflicts. Neither the execution and the delivery of this Agreement or the Ancillary Agreements, nor the consummation of the transactions contemplated hereby and thereby, will (i) violate any material Legal Requirement to which Seller is, or its assets or properties are, subject, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Seller.

(e) Brokers and Finders. Seller has not employed any broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof.

(f) Inventory. The Inventory is (a) free from any material defect or deficiency, (b) is in good and usable condition for sale and (c) meets in all material respects all of the applicable requirements and specifications.

(g) Intellectual Property.

(i) Seller exclusively owns the Intellectual Property free and clear of all Liens. The Intellectual Property will, immediately subsequent to the Closing, be transferred to, and controlled by Buyer on substantially the same terms with which Seller, immediately prior to the Closing, owned and controlled such Intellectual Property. To Seller's Knowledge, (i) Seller has not and is not infringing, misappropriating or otherwise violating (including with respect to the discovery, development, clinical testing, manufacture, distribution, advertising, use, exploitation or sale by Seller of the Product) the rights of any other Person with regard to Seller's possession or use of any Intellectual Property for its sale of the Product as presently conducted. To Seller's Knowledge, no other Person has or is infringing, misappropriating or otherwise violating the Intellectual Property. No claims against Seller are pending or, to Seller's Knowledge, threatened with regard to (i) the control or use of any of the Intellectual Property; or (ii) the validity or enforceability of any Intellectual Property.

(ii) Schedule 1.21(a) sets forth, as of the date hereof, a complete and accurate list of all Intellectual Property owned by Seller related to the Product that is being transferred to Buyer. To Seller's Knowledge, all Intellectual Property owned by Seller that is related to the Product has been duly registered or filed with or issued by each appropriate Governmental Authority in the jurisdiction indicated in Schedule 1.21(a), all related necessary affidavits of continuing use have been (or, with respect to licenses, to Seller's Knowledge have been) timely filed, and all related necessary maintenance fees have been (or, with respect to licenses, to Seller's Knowledge have been) timely paid to continue all such rights in effect.

(iii) No Other Representation or Warranties. Except for the representations and warranties contained in this Section 5.1, Seller makes no other express or implied warranty, and Seller hereby disclaims any such warranty or any representation whether by Seller or its respective officers, directors, employees, agents or representatives or any other Person, as to the condition (financial or otherwise), value or quality of the Product or the Transferred Assets, notwithstanding the delivery or disclosure to Buyer or any of its officers, directors, employees, agents or representatives or any other Person of any documentation or other information by Seller or any of its officers, directors, employees, agents or representatives or any other Person with respect to any one or more of the foregoing.

5.2 Buyer's Warranties. Buyer hereby represents and warrants to Seller, as of the date hereof and as of the Closing Date, as follows:

(a) Organization and Authority of Buyer. Buyer is validly existing and is in good standing under the Applicable Laws of the State of Delaware, with full power and authority to enter into this Agreement and perform its obligations hereunder. This Agreement has been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

(b) Litigation. There are no material Actions or Proceedings pending, or to Buyer's Knowledge, threatened, that questions the validity of this Agreement or any action taken or to be taken by the Buyer in connection herewith, or which individually or in the aggregate, would materially impair the ability of Buyer to perform its obligations hereunder or to consummate the transactions contemplated by this Agreement or the Ancillary Agreements.

(c) The Buyer possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities, required by applicable provisions of Laws.

(d) The Buyer has and will have at Closing cash available sufficient to enable it to consummate the transactions contemplated by this Agreement.

(e) No Conflicts. Neither the execution and the delivery of this Agreement nor the Ancillary Agreements, nor the consummation of the transactions contemplated hereby and thereby, will (i) violate any material Legal Requirement to which Buyer is, or its assets or properties are, subject, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Buyer, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject. Buyer does not need to give any material notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority or any other Person in order to consummate the transactions contemplated by this Agreement or the Ancillary Agreements. There is no proceeding pending or, to the Knowledge of Buyer, threatened against Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with the transactions contemplated by this Agreement or the Ancillary Agreements.

(f) Independent Investigation. The Buyer has conducted its own independent investigation, due diligence, review and analysis of the business, operations, assets (including Contracts), liabilities, results of operations, financial condition, software, technology and prospects of the business related to the Product, which investigation, review and analysis were undertaken by the Buyer and its Affiliates and representatives.

(g) Brokers and Finders. Buyer has not employed any broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof.

5.3 Non-Reliance. The Buyer agrees and acknowledges that the Buyer has relied solely on the representations and warranties set forth in Section 5.1 and except for the representations and warranties expressly set forth in Section 5.1, as modified by the Disclosure Schedule and any certificate delivered by or on behalf the Seller hereunder, neither the Seller nor any of its shareholders, trustees, Affiliates or representatives or any other Person, has made or is making any other representations or warranties, promises, covenants, agreements or guaranties, statutory, common law or otherwise, of any nature, oral or written, past, present or future, including any other representations or warranties, express or implied, with respect to, and the Buyer have not relied upon, the accuracy or completeness of any other information, provided, or made available by, the Seller or any of its representatives, with respect to, or in connection with, the negotiation, execution or delivery of this Agreement or the transactions contemplated hereby.

ARTICLE 6
COVENANTS

6.1 Obligations of the Parties Prior to Closing. Seller will not prior to the Closing Date (a) incur any material liability outside the ordinary course of business with respect to the Transferred Assets, or (b) create any Encumbrance on any of the Transferred Assets.

6.2 Non-Competition. The Parties hereto agree and acknowledge that the provisions of this Agreement shall not be construed to limit or restrict in any manner the rights of Seller or any of its Affiliates to develop, manufacture, use, sell or commercialize in any manner the Product in a generic or other formulation, either in the Territory or outside of the Territory; provided, however, that for a period of five (5) years commencing on the Closing Date, Seller shall not manufacture or commercialize any product containing the same active ingredient and in the same dosage and form as that of the Product in the Territory.

6.3 Use of the Transferred Assets. The Buyer agrees and acknowledges that Seller is not assigning, licensing or conveying any rights to the Buyer outside the Territory.

6.4 Standards of Quality. The Buyer agrees to comply with applicable Laws and regulations in the Territory in the marketing, sale, and distribution of Product.

6.5 Reasonable Efforts of the Parties. Seller and Buyer shall each use its respective Commercially Reasonable Efforts to cause all of the conditions to the obligations of the other to consummate the transactions contemplated hereby to be met as soon as practicable after the date of this Agreement and to do, or cause to be done, all things necessary to consummate the transactions contemplated hereby.

6.6 Registrations and Filings. (a) Without prejudice to applicable Legal Requirement in the Territory that may exclude this possibility, from and after the Closing, Buyer shall take the lead in coordinating the NDA transfers. Buyer shall file, or shall cause its Affiliate or designee to file, or, if required by applicable Legal Requirement, Seller, its Affiliate or designee shall file, applications for the transfer of the NDA in the Territory. (b) For the avoidance of doubt, Seller does not warrant and shall not be responsible for the successful transfer, maintenance or renewal of the NDA after the Closing Date and shall not be obligated to launch the Product in the Territory where it has not been launched before Closing.

6.7 Prescription Drug User Fee Act. Following the Effective Date, Buyer shall assume and have responsibility for fees or charges associated with the Product

due and payable to the FDA after the Effective Date pursuant to the Prescription Drug User Fee Act, and any reauthorization thereto. Seller shall retain full responsibility and liability for all fees or charges due and payable to the FDA on or prior to the Effective Date.

6.8 Confidentiality.

(a) Seller undertakes with Buyer, and Buyer undertakes with Seller to keep confidential (except as expressly provided in this Agreement) at all times after the date of this Agreement, and not directly or indirectly reveal, disclose or use for its own or any other purposes, any confidential information received or obtained as a result of entering into or performing, or supplied by or on behalf of a Party in the negotiations leading to, this Agreement and which relates to: (i) the negotiations relating to this Agreement; or (ii) the subject matter and/or provisions of this Agreement, subject to Section 6.8(b) below.

(b) The prohibition in Section 6.8(a) does not apply if: (i) the information was in the public domain before it was furnished to the relevant Party or, after it was furnished to that Party, entered the public domain otherwise than as a result of a breach by that Party of this Section 6.8 or any written or confidentiality agreement under which such Party is bound; (ii) disclosure is necessary in order to comply with applicable legislation, regulatory requirements, legal process, or stock exchange rules, provided that any such information disclosable pursuant to this Section 6.8(b) shall be disclosed only to the extent required by Legal Requirements and (unless such consultation is prohibited by Legal Requirements or is not reasonably practicable) only after consultation with Buyer or Seller (as the case may be) or (iii) Buyer is contemplating the sale, assignment, conveyance or other transfer to a Third Party of all or substantially all of its rights, title and interest in and to the Product, provided that Buyer shall have entered into a confidentiality agreement with such Third Party no less restrictive than this Section 6.8.

6.9 Further Assurances. Seller and Buyer, agree that subsequent to the Closing Date, at the request of the other Party, they will execute and deliver, or cause to be delivered, to the other Party, such further instruments and take such other action as may be reasonably necessary to carry out the transactions contemplated by this Agreement.

6.10 Costs and Expenses. Except as otherwise expressly provided herein, the Parties shall bear their own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants and independent accountants) incurred in connection with the preparation and execution of this Agreement and consummation of the transactions contemplated hereby, including assistance reasonably requested in consummating such transactions.

ARTICLE 7
INDEMNIFICATION AND INSURANCE

7.1 Indemnification by Seller. From and after the Closing Date, Seller shall defend, indemnify and hold harmless Buyer, its Affiliates, officers, directors, employees, and agents, against and in respect of any and all Losses, resulting or arising from or otherwise relating to:

(a) any breach by Seller of any covenant, representation or warranty of Seller contained in this Agreement or any Ancillary Agreements;

(b) any Liabilities resulting from the acts and omissions of the Seller prior to the Closing Date.

7.2 Indemnification by Buyer. From and after the Closing Date, Buyer shall indemnify and hold harmless Seller, its Affiliates, officers, directors, employees, and agents, against and in respect of any and all Losses resulting or arising from or otherwise relating to:

(a) any breach by Buyer of any covenant, representation or warranty contained in this Agreement or any Ancillary Agreements;

(b) Any Assumed Liabilities;

(c) use of the Marketing Collateral(s) by the Buyer after the Closing Date; and

(d) any negligent or intentional act committed by the Buyer or its employees or agents that caused injury to a person or damage to property, or failed to comply with any applicable law, statute, regulation or ordinance.

7.3 Method of Asserting Claims.

(a) All claims for indemnification ("Indemnity Claims") by any indemnified Party or a Party with respect to any other claim under or with respect to this Agreement or any Ancillary Agreements (the " Indemnified Party") hereunder shall be asserted and resolved as set forth in this Section 7.3. In the event that any written claim or demand for which a Party (the "Indemnifying Party") would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a Third Party, such Indemnified Party shall promptly, but in no event more than ten (10) days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (the "Claim Notice"). All indemnity claims by any Indemnified Party that do not involve Third Party claims shall be communicated via a Claim Notice to the other Party promptly following discovery of such claim.

(b) The Indemnifying Party shall have fifteen (15) days from the delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not it desires to defend the Indemnified Party against such claim or demand. An election to assume the defense of such claim or demand shall not be deemed to be an admission that the Indemnifying Party is liable to the Indemnified Party in respect of such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party; provided, however, that the amount of such expenses shall be a liability of the Indemnifying Party hereunder, subject to the limitations set forth in this Article 8. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the claim within such fifteen (15)-day period, the Indemnified Party may assume the defense thereof and the reasonable fees and disbursements of counsel for the Indemnified Party shall be deemed Losses hereunder, subject to the limitations set forth in this Article 8.

(c) In the event that it is ultimately determined that the Indemnifying Party is not obligated to indemnify, defend or hold the Indemnified Party harmless from and against any Third Party claim, the Indemnified Party shall reimburse the Indemnifying Party for any and all costs and expenses (including without limitation, attorney's fees and court costs) actually incurred by the Indemnifying Party in its defense of the Third Party claim. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings. If any Indemnified Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense.

(d) The Indemnified Party shall not settle a claim or demand without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, conditioned or delayed. The Indemnifying Party may settle any claim or demand for monetary damages; it being understood that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, conditioned or delayed) settle, compromise or offer to settle or compromise any such claim or demand on a basis which would result in the imposition of a consent order, injunction or decree that would substantially restrict the future activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof.

(e) To the extent the Indemnifying Party shall control or participate in the defense or settlement of any Third Party claim or demand, the Indemnified Party will give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party.

(f) The controlling party, in either case, shall select counsel, contractors, experts and consultants of recognized standing and competence, shall take reasonable steps necessary in the investigation, defense or settlement thereof, and shall diligently and promptly pursue the resolution thereof.

(g) Any notice of a claim by reason of any of the warranties or covenants contained in this Agreement shall state specifically the warranty or covenant with respect to which the claim is made, the facts giving rise to an alleged basis for the claim, and the amount of the liability asserted against the Indemnifying Party by reason of the claim.

7.4 Survival. The covenants and agreements of the Parties shall survive without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue for the applicable statute of limitations.

7.5 DAMAGES LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, NO PARTY, DIRECTOR, OFFICER, EMPLOYEE, AFFILIATE OR ADVISOR OF ANY OF THE FOREGOING, SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PERSON, EITHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR ANY DAMAGES ASSOCIATED WITH ANY LOST PROFITS OR LOST OPPORTUNITIES OF SUCH OTHER PERSON (INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION) RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH OTHER PARTY.

7.6 Limitation of Liability. Notwithstanding the foregoing, except for actions grounded in fraud, the maximum amount of indemnifiable Losses which may be recovered cumulatively from the Seller arising out of or resulting from the causes set forth in Section 7.1 shall be an amount equal to [***].

7.7 Cooperation. The Parties shall cooperate with each other with respect to resolving any claim or liability with respect to which one Party is obligated to indemnify another Party hereunder, including by making Commercially Reasonably Efforts to mitigate or resolve any such claim or liability.

7.8 Manufacturing. Seller shall introduce Buyer to the current manufacturer of the Product, and shall reasonably cooperate with Buyer with respect to transitioning manufacturing services to Buyer. Seller shall not manufacture the Product following the date hereof, including any orders of Product placed prior to the date hereof.

ARTICLE 8
MISCELLANEOUS

8.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) upon delivery by personal delivery, (b) upon delivery by a nationally-recognized overnight courier service, or (c) three days after mailing, if mailed, certified or registered mail (return receipt requested), postage prepaid, each to the other Party at the following address (or at such other address as shall be given in writing by any Party to the other in accordance with these provisions):

If to the Buyer, to:

Journey Medical Corporation
9237 Via De Ventura Suite 135
Scottsdale, AZ 85258

With a copy to:

Wyrick Robbins Yates & Ponton LLP
4101 Lake Boone Trail
Raleigh, NC 27604
Attn: David Mannheim, Esq.
(919) 781-4000, wmannheim@wyrick.com

If to the Seller to:

Sun Pharmaceutical Industries, Inc.
[***]

or to such other Person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given (a) on the date on which so hand delivered and (b) on the third Business Day following the date on which so mailed, except for a notice of change of address, which shall be effective only upon receipt thereof.

8.2 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of any Ancillary Agreements, the provisions of this Agreement shall prevail.

8.3 Assignability; Successors and Assigns. Neither this Agreement nor any of the rights or obligations of the Parties hereunder may be assigned by any Party

without the prior written consent of the other Party, provided that a Party may assign its rights and obligations under this Agreement, without the prior written consent of the other party, to an Affiliate or to a successor of the assigning party by reason of merger, sale of all or substantially all of its assets or any similar transaction. Any attempted assignment or delegation in contravention hereof shall be null and void. Subject to the foregoing, this Agreement and all rights and powers granted and obligations created hereby will bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

8.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state and subject to Section 8.5, the courts in the State of New York shall have exclusive jurisdiction.

8.5 Dispute Resolution. In the event of any dispute arising out of or in connection with this Agreement, the dispute shall be settled by arbitration in accordance with American Arbitration Association and its rules which are deemed to be incorporated by reference to this section, for the time being in force. The arbitral tribunal shall consist of a sole arbitrator appointed in accordance with the said rules. The seat of arbitration shall be New York and the language of the arbitration shall be English. The award rendered by the sole arbitrator shall be final and binding and enforceable in any court of competent jurisdiction.

8.6 Headings. The headings preceding the text of the Sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All words used in this Agreement will be construed to be of such gender or number as the context may require.

8.7 Amendment and Waiver. The Parties may by mutual written agreement amend this Agreement in any respect, and any Party, as to such Party, may (a) extend the time for the performance of any of the obligations of any other Party, and (b) waive (i) any inaccuracies in warranties by any other Party, (ii) compliance by any other Party with any of the agreements contained herein and performance of any obligations by such other Party, and (iii) the fulfillment of any condition that is precedent to the performance by such Party of any of its obligations under this Agreement. To be effective, any such amendment or waiver must be in writing and be signed by both Parties.

8.8 Entire Agreement. This Agreement, together with the Ancillary Agreements, shall constitute the entire understanding and agreement between the Parties to it in relation to the subject matter of this Agreement and shall together supersede all previous agreements between the Parties in relation to the same subject matter. It is further agreed that neither Party has entered into this Agreement in reliance upon any warranty or undertaking of the other Party which is not expressly set out or referred to in this Agreement.

8.9 Press Release. Neither Party shall issue any press release, trade announcement or make any other public announcement with regard to the transactions contemplated by this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld. This restriction shall not apply to announcements required by any Government Authority. However, in such event the Parties shall, to the extent reasonably practicable, coordinate the wording of any such announcements. To the extent any Party is required to file a copy of this Agreement or any Ancillary Agreement as an exhibit to any filings with, or otherwise publicly disclose the terms hereof or thereof to, the Governmental Entity, the Parties will coordinate in advance on the form of redacted version of this Agreement or applicable Ancillary Agreement or the terms to be so filed or disclosed and permit the other Party to provide comments and take such comments into account in good faith prior to making such filing.

8.10 No Third Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Person or entity other than the Parties signatory hereto any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

8.11 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement.

8.12 Severability. Each of the agreements, undertakings, covenants, warranties, indemnities and other obligations of the Parties entered pursuant to this Agreement are considered reasonable by the Parties hereto. If any provision of this Agreement, an Ancillary Agreement, or any part thereof is held void or unenforceable or in conflict with the laws of any relevant jurisdiction, the Parties hereto shall negotiate in good faith to modify this Agreement or Ancillary Agreement, as applicable, so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

8.13 Relationship. The relationship between the parties is that of independent contractor. Nothing in this Agreement shall be construed as creating a relationship of a joint venture, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document.

8.14 Counterparts. This Agreement may be executed in two counterparts, each of which shall for all purposes be deemed to be an original and both of which shall, when taken together, constitute one instrument.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

JOURNEY MEDICAL CORPORATION

By: /s/ Claude Maraoui
Name: Claude Maraoui

Title: President &CEO

SUN PHARMACEUTICAL INDUSTRIES, INC.

By: /s/ Abhay Gandhi

Name: Abhay Gandhi
Title: CEO — North America

Exhibit 10.10

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

AMENDMENT 1 TO ASSET PURCHASE AGREEMENT

This AMENDMENT 1 TO ASSET PURCHASE AGREEMENT ("Amendment 1") is entered into on this 5th day of September, 2018 ("Amendment 1 Effective Date") by and between Journey Medical Corporation, a Delaware corporation having its principal place of business at 9237 Via De Ventura Suite 135, Scottsdale, AZ 85258 (the "Buyer") and Sun Pharmaceutical Industries, Inc, a Michigan corporation, located at[***] (the "Seller"). Buyer and Seller are referred to herein individually as a"Party" and collectively as the "Parties".

WHEREAS, Buyer and Seller entered into an Asset Purchase Agreement dated 31st August, 2018 (the"Agreement").

WHEREAS, the Parties wish to amend and supplement certain of the terms and conditions of the Agreement under this Amendment 1 as recorded herein.

WHEREAS, this Amendment 1 forms part of and is to be read with the Agreement as from the Amendment 1 Effective Date.

NOW, THEREFORE, the Parties agree as follows:

1 AMENDMENTS

The Parties hereby amend the Agreement as follows:

1.1 Section 6.7 of the Agreement shall be deleted and replaced by the following:

"Prescription Drug User Fee Act. Following the Effective Date, Buyer shall assume and have responsibility for fees or charges associated with the Product due and payable to the FDA after the Effective Date pursuant to the Prescription Drug User Fee, and any reauthorization thereto ("PDUFA Fees"). Seller shall retain full responsibility and liability for the PDUFA Fees due and payable on or prior to the Effective Date. In the event the Seller makes payment of any PDUFA Fees after the Effective Date, the Buyer shall reimburse the PDUFA Fees to the Seller within thirty (30) Business Days from the date of receipt of invoice raised by the Seller."

2 GENERAL

2.1 As of the Amendment 1 Effective Date, this Amendment 1 shall be read together with and shall be deemed to be incorporated in the Agreement and shall be governed by the terms, conditions and definitions set forth in the Agreement, as if such terms were fully set forth herein.

2.2 Except as expressly amended hereby, the terms and conditions of the Agreement shall continue in full force and effect and are hereby confirmed and ratified.

2.3 If there is inconsistency between the provisions of the Agreement and this Amendment 1, the provisions of the Amendment 1 shall prevail.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment 1 as on the date first mentioned above.

Journey Medical Corporation

By: /s/
Name:
Title:

Sun Pharmaceutical Industries

By: /s/
Name:
Title:

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

By and between

JOURNEY MEDICAL CORPORATION

and

SUN PHARMACEUTICAL INDUSTRIES, INC.

Dated: July 22nd, 2019

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated July 22nd, 2019 (the "Effective Date"), is entered into by and between Journey Medical Corporation, a Delaware corporation having its principal place of business at 9237 Via De Ventura Suite 105, Scottsdale, AZ 85258 (the " Buyer"), and Sun Pharmaceutical Industries, Inc, a Michigan corporation, located at [***] (the "Seller"). Buyer and Seller are referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Seller owns and possesses the Transferred Assets (as defined herein).

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in the Transferred Assets (as defined herein) with respect to the Territory upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

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

1.1 "Action or Proceeding" means any action, claim, charge, complaint, cause of action, demand, suit, proceeding, arbitration, audit, notice of violation, citation, summons, subpoena, court order, inquiry, hearing, assessment with respect to fines, or investigation, of any nature, civil, criminal, administrative, regulatory or otherwise, whether formal or informal, whether public or private and whether at law or in equity.

1.2 "Additional Payments" shall have the meaning set forth in Section 4.1(b).

1.3 "Affiliate(s)" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person from time to time. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of such Person (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity). For the avoidance of doubt and notwithstanding the foregoing provisions of this Section 1.3, Sun Pharmaceutical Industries Ltd. will be considered an Affiliate of Seller for all purposes of this Agreement.

1.4 "Agreement" means this Asset Purchase Agreement, together with the Schedules and Exhibits attached hereto, as the same is amended and/or supplemented from time to time in accordance with the terms hereof.

1.5 "Ancillary Agreements" means, other than this Agreement, the Supply Agreement, the Novation Agreement and all other agreements, certificates and documents signed and delivered by any party in connection with this Agreement or the Transactions.

1.6 "Assumed Liabilities" shall have the meaning set forth in Section 2.7.

1.7 "Business Day" means a day other than a Saturday, Sunday, bank or other public holiday in the State of New York, USA.

1.8 "CDA" means the Confidentiality Agreement by and between Buyer and Seller entered into on September 06, 2017.

1.9 "Claim Notice" shall have the meaning set forth in Section 7.3(a).

1.10 "Closing" shall have the meaning set forth in Section 3.1.

1.11 "Closing Date" shall have the meaning set forth in Section 3.1.

1.12 "Commercially Reasonable Efforts" shall mean the diligent, good faith efforts, consistent with general practices and standards in the pharmaceutical industry with those used in the pharmaceutical industry of similar size and with similar resources of Buyer, taking into account all scientific, commercial and other relevant factors, would normally use to accomplish a similar objective for its product having similar technical and regulatory factors (including safety and efficacy), similar expected and actual time and cost to commercialize, similar commercial and profit potential, competitive landscape, a similar proprietary position and strategic value, and that is at a similar stage in

its product life cycle as the applicable Product, in each case based on existing and reasonably anticipated future conditions. Commercially Reasonable Efforts shall be determined on a market-by-market basis for the Product.

1.13 "Confidential Information" means any confidential or proprietary information of a Party, including, but not limited to, any information related to any compound, research project, work in process, future development, scientific, engineering, manufacturing, marketing, business plan, financial or personnel matter relating to such Party, its present or future research, products, services, sales, suppliers, customers, employees, investors, or business, whether in oral, written, graphic or electronic form. Notwithstanding the foregoing, (i) Confidential Information does not include any information that the receiving Party can prove by competent written evidence: (a) is now or hereafter becomes generally known or available through no unlawful act or failure to act on the part of the receiving Party; (b) is known by the receiving Party at the time of receiving such information as evidenced by the receiving Party's records; (c) is hereafter furnished to the receiving Party by a third party as a matter of right and without restriction on disclosure; (d) is independently developed by the receiving Party as evidenced by the receiving Party's records, without knowledge, aid, application or use of the Confidential Information of the disclosing Party; or (e) is the subject of a written permission to disclose provided by the disclosing Party, and (ii) all Confidential Information of Seller related to the Product and the Transferred Assets shall, upon the transfer of the Transferred Assets (as applicable) pursuant to the teens of this Agreement, be deemed to the Confidential Information of Buyer, and Seller shall be deemed the receiving Party, and Buyer the disclosing Party, with respect thereto.

1.14 "Consent" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

1.15 "Contract" means any contract, lease, arrangement, indenture, note, bond, mortgage, guarantee, loan, instrument, commitment or other agreement (including any lease for personal or real property and any employment agreement), written or oral (including any amendments, supplements, restatements, extensions and other modifications thereto), of Seller or any Affiliate thereof, to which Seller or any Affiliate thereof is a party or by which Seller or any Affiliate thereof, the Transferred Assets, or any assets or properties of Seller or any Affiliate thereof are bound and that are in effect as of the date of this Agreement.

1.16 "Effective Date" has the meaning set forth in the preamble.

1.17 "Encumbrance" means any claim, charge, equitable interest, hypothecation, lien, mortgage, pledge, security interest, license, adverse claim of ownership or use, reversion, violation, option, restriction on transfer, defect of title, covenant, restriction, rights of others, or any other encumbrance of any kind, whether imposed by agreement, understanding, Law, equity or otherwise.

1.18 "Excluded Liabilities" shall have the meaning set forth in Section 2.8.

1.19 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

1.20 "FDA Act" means the U.S. Federal Food, Drug and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder.

1.21 "GAAP" means general accounting principles as in effect in United States of America.

1.22 "Governmental Authority" means (a) any federal, state, regional, county, city, municipal or local government, whether foreign or domestic and (b) any governmental or quasi-governmental authority of any nature, including any regulatory or administrative agency, commission, department, board, bureau, court, tribunal, arbitrator, arbitral body, agency, ministry, branch, official entity or other administrative or regulatory body obtaining authority from any of the foregoing, and (c) any supra-national organization, state, county, city or other political subdivision.

1.23 "Governmental Order" means any order, writ, judgment, citation, injunction, decree, ruling, charge, stipulation, determination or award entered by any Governmental Authority.

1.24 "Indemnified Party" shall have the meaning set forth in Section 7.3(a).

1.25 "Indemnifying Party" shall have the meaning set forth in Section 7.3(a).

1.26 "Indemnity Claims" shall have the meaning set forth in Section 7.3(a).

1.27 "Intellectual Property" means, (a) all trademarks, service marks, trade dress, logos, and trade names solely and exclusively related to the marketing, distribution, advertising and sale of the Product, which are listed on Schedule 1.27(a), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith (the "Assigned Trademarks"); and (b) the domain names listed on Schedule 1.27(b) and the digital graphics files supporting such site (the "Assigned Domain Names").

1.28 "Inventory" means all stock of Product that are solely maintained, held, or stored by or on behalf of the Seller or any Affiliate thereof as of the Effective Date for sale, distribution and commercialization in the Territory.

1.29 "Inventory Amount" shall have the meaning set forth in Section 4.2.

1.30 "Inventory Statement" shall have the meaning set forth in Section 4.2.

1.31 "Knowledge" means (a) in the case of Seller, (i) for purposes of Section 5.1(g)(i) and (ii), the actual knowledge of the applicable Persons set forth on Schedule 1.31(a) after reasonable investigation of the subject matter set forth in Section 5.1(g)(i) and inquiry of their direct reports, and (ii) for all other purposes, the actual knowledge of the applicable Persons set forth on Schedule 1.31(b), and (b) in the case of Buyer, the actual knowledge of the applicable Persons set forth on Schedule 1.31(c).

1.32 "Law" or "Laws" means any federal, state, local, foreign or multinational constitutions, treaties, laws, statutes, ordinances, regulations, rules, standards, codes, Governmental Orders, writs, injunctions, decrees, arbitration awards, agency or regulatory requirements or licenses or permits of any kind whatsoever of any Governmental Authority, all as amended from time to time.

1.33 "Liabilities" shall mean, collectively, any debt, obligation, duty, guaranty, claim, loss, damage, deficiency, cost, expense, fees, commitment, obligation, responsibility, or liability of any nature, whether primary, secondary, or direct, whether absolute, contingent, fixed or otherwise, whether asserted or unasserted, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due, and whether known or unknown.

1.34 "Losses" shall mean any and all losses, damages, obligations, Liabilities, Taxes, fines, fees, costs, expenses, penalties, interest, awards, judgments, claims, demands, actions, suits and settlements of any kind (whether, in any case, absolute, accrued, conditional or otherwise), including attorneys' and consultants' fees and expenses and other costs and expenses.

1.35 "Marketing Collateral" shall mean the materials solely and exclusively related to the Product as set forth in Schedule 1.35.

1.36 "Net Sales" means for any period, the aggregate gross amounts invoiced by Buyer, its Affiliates or distributors for sales of the Product in bona fide, arms-length transactions in the Territory for use in the Territory, less the following deductions allowed or accrued by using GAAP to the extent separately invoiced or displayed in the invoice:

(a) credits or allowances actually granted for damaged Product, returns, rejections, withdrawals or recall of Product or failure to supply, chargebacks, price adjustments and billing errors or on account of retroactive price reductions affecting the Product;

(b) governmental rebates, patient vouchers or coupons granted to managed health care organizations; pharmacy benefit managers; and Governmental Authorities and their agencies, purchasers and reimbursers;

(c) normal and customary trade, cash and quantity discounts, allowances and credits; and

(d) Taxes applied to the sale, import, or export of Product to the extent included in the gross amount invoiced.

1.37 "Notice Period" shall have the meaning set forth in Section 7.3(b).

1.38 "Permitted Encumbrance" means (a) any Encumbrance for Taxes, assessments and other governmental charges that are not yet due and payable, (b) with respect to licenses, permits or Contracts included in the Transferred Assets, if any, any restrictions, obligations, limitations or other Encumbrances contained in such license, permit or Contract or existing at Law or under the regulatory regime pursuant to which such permit or license is granted that do not materially impair the current use of the Product, or (iii) with respect to the NDA, any restrictions, obligations, limitations or other Encumbrances contained in such NDA or existing at Law or under the regulatory regime pursuant to which such NDA is granted that do not materially impair the current use of the Product.

1.39 "Payers" shall have the meaning set forth in Section 6.9(c).

1.40 "Person" means any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, or any other entity or Governmental Authority.

1.41 "Product" means Ximino (minocycline hydrochloride) extended release capsules (all mg strengths) as described in the Product NDA.

1.42 "Product NDA" the New Drug Application (as defined in and regulated under the FDA Act) identified as number 201922 including all applications therefor, and all amendments, modifications, supplements, submissions, and updates with respect thereto.

1.43 "Purchase Price" shall have the meaning set forth in Section 4.1.

1.44 "[***]" shall have the meaning set for in [***]

1.45 "Representative(s)" means, with respect to any Party to this Agreement, its Affiliates such Party's and its Affiliates' directors, officers, members, managers, attorneys, accountants, representatives and other agents.

1.46 "Royalty" or "Royalties" shall have the meaning set forth in Section 4.3.

1.47 "Royalty Term" means the time period commencing on the Effective Date and ending on December 31, 2022.

1.48 "Supply Agreement" shall have the meaning set for in Section 6.5(a).

1.49 "Tax" or "Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, customs, severance, stamp, occupation, premium, windfall profit, environmental, capital stock, franchise, profits, inventory, withholding, social security (or similar), unemployment, disability, real property, personal property, ad valorem, sales, use, transfer, registration, value-added, alternative or add on minimum, estimated or other tax levy, duty, tariff, impost, fee or similar charge of any kind whatsoever imposed by any Governmental Authority, including any interest, penalty, fine or addition thereto or imposed in connection therewith, whether disputed or not.

1.50 "Territory" means the United States of America and, for the sake of clarity, the Commonwealth of Puerto Rico for purposes of indirect sales of the Product, including, without limitation, transportation of the Product to a customer's warehouse located in Puerto Rico at the direction of such customer located outside of the Commonwealth of Puerto Rico.

1.51 "Third Party" means any Person other than a Party or any of their respective Affiliates.

1.52 "Transactions" shall have the meaning set forth in Section 3.2(a).

1.53 "Transferred Assets" shall have the meaning set forth in Section 2.1.

1.54 "Upfront Payment" shall have the meaning set forth in Section 4.1(a).

1.55 "[***]" means [***].

1.b. Interpretation. Unless the context otherwise requires, the terms defined in this Article 1 shall have the meanings herein specified for all purposes of this Agreement,

applicable to both the singular and plural forms of any of the terms defined herein. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Any reference to any contract or other document or instrument or to any Law is to it as amended and supplemented from time to time through the Effective Date (and in the case of any Law, to any successor provisions, and to any rules and regulations promulgated thereunder, in effect as of the date of this Agreement), unless the context requires otherwise.

ARTICLE 2
PURCHASE AND SALE OF THE TRANSFERRED ASSETS

2.1 Transfer of Assets. Upon the terms and subject to the conditions set forth herein, Seller hereby sells, conveys, transfers, assigns and delivers to Buyer, and Buyer hereby purchases from Seller, all of Seller's right, title and interest in and to the following assets with respect to the Territory (collectively, the "Transferred Assets"), free and clear of all Encumbrances (except Permitted Encumbrances):

(a) the Product NDA;

(b) the Inventory;

(c) [***]; and

(d) all Intellectual Property.

2.2 Timing of Transfer of Transferred Assets. The Parties hereby agree and acknowledge that (a) [***] and the Intellectual Property shall be transferred by Seller to Buyer on the Effective Date, (b) the Inventory shall be transferred by Seller to Buyer in accordance with Section 4.2 below, and (c) the Product NDA shall be transferred by Seller to Buyer on the Closing Date.

2.3 License to Marketing Collaterals. Solely to the extent necessary for Buyer to market the Product in the Territory, Seller hereby grants to Buyer a limited, exclusive, non-transferable and royalty free license to Seller's rights in the Marketing Collaterals. Upon the terms and subject to the conditions set forth herein, after the Effective Date, Seller shall promptly deliver to Buyer the Marketing Collaterals. For the avoidance of doubt, nothing herein shall be construed as a grant or license of any rights to any Seller trademark, service mark, trade dress, logo, trade name or corporate name similar or related thereto other than those specifically included in the Transferred Assets.

2.4 Record Retention by Seller. The Buyer acknowledges and agrees that Seller may retain, solely for archival purposes and for purposes of complying with applicable Laws and for legal and regulatory purposes as sellers of pharmaceutical products, one copy of all or any part of the documentation that Seller delivers to Buyer pursuant to Section 2.1.

2.5 Other Assets Excluded. Other than the Transferred Assets set forth in Section 2.1, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller not specifically related to the Product, including but not limited to Seller's trademarks, trade dress, logos, corporate designs, and the like that are incorporated in the Marketing Collateral and in the digital graphics files forming part of the Intellectual Property, and all such other assets and properties shall be excluded from the Transferred Assets.

2.6 [***]. [***]

2.7 Assumption of Certain Liabilities. Upon the terms and subject to the conditions set forth herein, Buyer shall assume, be responsible for and pay, and perform and discharge when due, the following Liabilities of Seller (collectively, the "Assumed Liabilities"): (a) from and after the Effective Date, all of the Liabilities of Seller that arise out of or are related to the Product, [***], and the Intellectual Property that arise out of, are in connection with or relate to events, circumstances and conditions first occurring or existing on or after the Effective Date, subject in the case of the [***] to any claims by Buyer against Seller pursuant to Section 7.1(d); (b) Liabilities related to the Inventory pursuant to Section 4.2 following the date of transfer; and (c) from and after the Closing Date, all of the Liabilities of Seller that arise out of or are related to the Product NDA that arise out of, are in connection with or relate to events, circumstances and conditions first occurring or existing on or after the Closing Date.

2.8 Non-Assumption of Other Liabilities. Other than the Assumed Liabilities, neither Buyer nor any of its Affiliates assume or in any way undertake to pay, perform, satisfy or discharge any Liability or other obligation whatsoever of Seller, including, without limitation, any and all Liabilities for Taxes, trade accounts payable and employee benefits occurring prior to the Effective Date (the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include any and all Liabilities and Actions or Proceedings directly or indirectly involving personal injury or bodily harm arising out of, in connection with or related to events, circumstances and conditions occurring or existing before the Effective Date. Seller will promptly pay and discharge all Excluded Liabilities in the ordinary course of business.

ARTICLE 3
CLOSING & CONDITIONS PRECEDENT

3.1 Closing. The consummation of the purchase and sale of the Transferred Assets and the Assumption of the Assumed Liabilities contemplated hereby (the "Closing") will take place on the date of receipt of the Upfront Payment by the Seller pursuant to Section 4.1(a) or, if all the conditions set forth in Sections 3.2(a) and 3.2(b) are not then satisfied or waived, the first such Business Day thereafter on which they are waived or satisfied (the "Closing Date"). The Closing shall be effective as of 12:01 AM Eastern Time on the Closing Date.

3.2 Conditions to Closing.

(a) General Conditions. The obligation of the Parties to consummate the transactions contemplated by this Agreement (the "Transactions") at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by both Parties):

(i) No Actions or Proceedings. No Action or Proceeding has been instituted or threatened prior to or on the Closing Date before any Governmental Authority pertaining to the Transactions, the result of which could prevent or make illegal the consummation of the Transactions.

(ii) No Governmental Order. There is not in force any Governmental Order by or before any Governmental Authority of competent jurisdiction restraining, enjoining, prohibiting, invalidating or otherwise preventing the consummation of the Transactions.

(b) Conditions to Seller's Obligations. The obligation of Seller to consummate the Transactions at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by Seller):

(i) True Representations and Warranties. The representations and warranties of Buyer made in Article 5 of this Agreement shall be true and correct as of the Effective Date. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Buyer by the time of the Closing.

(ii) Delivery of Documents. Buyer has executed and delivered all documents, certificates, instruments and schedules required under Sections 3.3(a) and 3.4(a) to Seller; and

(iii) Officer's Certificate. Buyer shall have delivered to Seller a certificate dated as of the Closing Date and signed by an authorized officer of Buyer to the effect that the conditions specified in Sections 3.2(b)(i) and (ii) have been satisfied by Buyer.

(c) Conditions to Buyer's Obligations. The obligation of Buyer to consummate the Transactions at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by the Buyer):

(i) True Representations and Warranties. The representations and warranties of Seller made in Article 5 of this Agreement shall be true and correct as of the Effective Date. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller by the time of the Closing.

(ii) Consents. Seller shall have received and delivered to Buyer all Consents as required in order to assign and transfer to Buyer the Transferred Assets;

(iii) Delivery of Documents. Seller has executed (if applicable) and delivered all documents, certificates, instruments and schedules required under Sections 3.3(b) and 3.4(b) to Buyer; and

(iv) Transfer of Certain Assets. Seller shall have delivered to Buyer documentation evidencing that Seller is the owner of the Product NDA and all Intellectual Property and has good and marketable title to the same, free and clear of all Encumbrances except Permitted Encumbrances.

(v) Officer's Certificate. Seller shall have delivered to Buyer a certificate dated as of the Closing Date and signed by an authorized officer of Seller to the effect that the conditions specified in Sections 3.2(c)(i) through (iii) have been satisfied by Seller.

3.3 Effective Date Deliverables. On or prior to the Effective Date, the following shall be delivered:

(a) Buyer shall deliver to Seller a domain name assignment, substantially in the form of Exhibit D attached hereto (the "Domain Name Assignment"), executed by Buyer, effecting the assignment and transfer to Buyer of the Assigned Domain Names.

(b) Seller shall deliver to Buyer:

(i) a copy of the Domain Name Assignment executed by Seller; and

(ii) a Consent, duly executed by Valeant, (1) consenting to the assignment of the [***] to Buyer and (2) waiving Valeant's right of first offer under Section 3.5 of the [***] subject to Buyer assuming all the obligations of the Seller under the [***].

3.4 Closing Deliverables. At the Closing, the following shall be delivered:

(a) Buyer shall deliver to Seller:

(i) a letter to the FDA, substantially in the form of Exhibit B attached hereto (the "Buyer FDA Letter"), executed by Buyer, accepting the transfer of the Product NDA to Buyer; and

(ii) a trademark assignment, substantially in the form of Exhibit C attached hereto (the "Trademark Assignment"), executed by Buyer, effecting the assignment and transfer to Buyer of the Assigned Trademarks; and

(iii) the certificate required to be delivered by Buyer under Section 3.2(b)(iii).

(b) Seller shall deliver to Buyer:

(i) a letter to the FDA, substantially in the form of Exhibit E attached hereto (the "Seller FDA Letter"), executed by Seller, informing FDA of the transfer of the Product NDA to Buyer; and

(ii) a copy of the Trademark Name Assignment executed by Seller;

(iii) the certificate required to be delivered by Seller under Section 3.2(c)(iv).

ARTICLE 4
PRICE & TERMS

4.1 Purchase Price. As consideration for the Transferred Assets, Buyer shall pay to Seller the following (together, the "Purchase Price"), each such payment to be paid in U.S. Dollars by wire transfer of immediately available funds to a bank account designated in writing by Seller to the Buyer:

(a) A non-refundable and non-creditable payment of Two Million and Four Hundred Thousand U.S. Dollars (U.S. $2,400,000) within sixty (60) days

from the Effective Date ("Upfront Payment").

(b) Additional payments, totaling $7,000,000 in the aggregate, of the amounts set forth below on the dates set forth below (collectively "Additional Payments"):

(i) Two Million U.S. Dollars (U.S. $2,000,000) on the second anniversary of the Effective Date;

(ii) Two Million U.S. Dollars (U.S. $2,000,000) on the third anniversary of the Effective Date;

(iii) One Million Five Hundred Thousand U.S. Dollars (U.S. $1,500,000) on the fourth anniversary of the Effective Date; and

(iv) One Million Five Hundred Thousand U.S. Dollars (U.S. $1,500,000) on the fifth anniversary of the Effective Date.

(c) The Inventory Amount as set forth in Section 4.2 below.

(d) The Royalty, as set forth in Section 4.3 below.

4.2 Inventory. Seller shall prepare a statement for the Inventory it will possess on the Effective Date and Seller's cost of such Inventory ("Inventory Statement") and provide such statement to the Buyer at least ten (10) Business Days prior to the Effective Date. In consideration of Seller transferring the Inventory to Buyer, Buyer shall pay to Seller an amount equivalent to the value of the total quantity, which shall be equal to Seller's cost, of Inventory set forth on the Inventory Statement (i.e. USD per unit multiplied by total quantity of the Inventory) (the "Inventory Amount"). Buyer shall pay the Inventory Amount within twenty (20) Business Days from the date of receipt of the Inventory Statement. For clarity, Seller is not required to invoice Buyer for the payment of the Inventory Amount. Seller shall deliver the Inventory as per Ex-Works (Incoterms 2010) Cranbury, New Jersey. The Parties hereby agree and acknowledge that the Inventory will be sold by Buyer with the existing label, however Buyer shall make Commercially Reasonable Efforts to change the labelling as soon as practicable. Seller shall reasonably assist Buyer in handling any customer complaints/queries. Notwithstanding anything contained herein, Buyer hereby agrees and acknowledges that it shall be solely responsible and liable for any and all claims or actions arising out of or in connection with the handling, storing, marketing, promoting, distributing and selling of the Inventory. Seller shall make the Inventory available to Buyer within two (2) Business Days following the Effective Date.

4.3 Royalty. For each calendar year during the Royalty Term, Buyer shall pay to Seller a royalty on the Net Sales of the Product (the "Royalty") in accordance with the following (which, for the avoidance of doubt, will be in addition to any other royalties required to be paid by Buyer to any Third Parties on the sale of Product, including but not limited to royalties required to be paid pursuant to the [***]):

(a) [***] ([***]%) of Net Sales of the Product in the Territory in a particular calendar year for all Net Sales up to and including [***] U.S. Dollars (U.S. $[***]); and also

(b) [***] ([***]%) of all Net Sales of the Product in the Territory in excess of the Net Sales of [***] U.S. Dollars (U.S. $[***]) in a particular calendar year.

For example, if there is U.S. $[***] of Net Sales of the Product in a particular calendar year, Buyer shall owe Seller U.S. $[***] for such Net Sales under this Section 4.3.

Buyer shall make payments to Seller of the Royalty quarterly during the Royalty Term, with such Royalty payments due and payable within sixty (60) days following the end of each applicable calendar quarter during the Royalty Term. For the purpose of payment of the Royalty in any calendar quarter under this Section 4.3, the Royalty shall be paid by Buyer at the rate of [***] percent ([***]%) of Net Sales. At the end of each calendar year, the Parties shall determine the correctness of the computation and payment of the Royalty in such prior calendar year and any excess Royalty (for Net Sales of the Product in the Territory in excess of [***] U.S. Dollars (U.S. $[***])) shall be paid by Buyer to Seller in accordance with Section 4.3(b). Such excess Royalty shall be payable within thirty (30) Business Days from the end of the relevant calendar year.

4.4 Audit Right. Upon not less than five (5) Business Days' written notice and no more than once per calendar year (except in the event of a discrepancy in the calculation of Net Sales in excess of two percent (2%) in such audit), Seller shall have the right to audit the books and records of Buyer to the extent relating to Net Sales solely for the purposes of determining the correctness of Buyer's computation and payment of the Royalty. Such audit shall be conducted during normal business hours by an accountant selected by Seller. All costs and expenses for conducting the audit shall be borne by the Seller, except that if the audit report shows that the Royalties were underpaid or overpaid by five percent (5%) or more, then all costs and expenses for conducting the audit shall be borne by Buyer. Payment of any underpaid or overpaid Royalties, along with the costs and expenses for conducting the audit, shall be paid with or deducted from the immediately following Royalty payment, as applicable. The right to audit under this Section 4.4 by the Seller shall survive termination or expiration of this Agreement by a period of one (1) year therefrom.

4.5 Submission of FDA Letters. Buyer shall send the Buyer FDA Letter to the FDA, and Seller shall send the Seller FDA Letter to the FDA, within ten (10) Business Days of Closing.

4.6 Late Payment. Seller shall be entitled to charge simple interest at the rate of [***] ([***]%) per annum, based on a three hundred and sixty-five (365) day year, on any amounts overdue from the due date for payment until receipt by Seller of the full amount, without prejudice to any other right or remedy of Seller.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Seller's Warranties. Except as set forth on the Disclosure Schedule delivered by Seller to Buyer, as of the Effective Date, Seller represents and warrants to Buyer as follows:

(a) Organization and Authority. Seller is a corporation, validly existing and in good standing under the Laws of the State of Michigan, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement and the Transactions have been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been, duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Seller enforceable in accordance with their terms.

(b) Title. Seller owns, and has good and marketable title to, the Transferred Assets, free and clear of all Encumbrances except Permitted Encumbrances. There are no adverse claims of ownership to the Transferred Assets and, to the Seller's Knowledge, Seller has not received written notice that any Person has asserted a claim of ownership or right of possession or use in or to any of the Transferred Assets. (i) As of the Effective Date, Buyer will acquire from Seller good and marketable title to the Transferred Assets, other than the Inventory and the Product NDA, (ii) upon the transfer of the Inventory to Buyer pursuant to Section 4.2, Buyer will acquire from Seller good and marketable title to the Inventory, and (iii) at Closing, Buyer will acquire from Seller good and marketable title to the Product NDA.

(c) Litigation; Legal Compliance.

(i) There is no material Action or Proceeding pending or, to Seller's Knowledge, threatened (1) with respect to the Transferred Assets, (2) that affects or, if successful, would affect the validity of this Agreement or any action taken or to be taken by Seller in connection herewith, or (3) which individually or in the aggregate, would materially impair the ability of Seller to perform its obligations hereunder or to consummate the Transactions.

(ii) Neither Seller nor any director, officer, employee, agent, contractor or distributor of Seller has committed or been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar applicable Law. Neither Seller nor any director, officer, employee, agent, contractor or distributor of Seller has been convicted of any crime or engaged in any conduct for which such person could be excluded from participating in federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar law. No Actions or Proceedings that could reasonably be expected to result in a debarment or exclusion are pending or threatened against Seller or any of its directors, officers, employees or agents. Seller has never been: (1) debarred or (2) convicted of a crime for which a person can be debarred under Section 306(a) of the Generic Drug Enforcement Act of 1992 (Section 306 (a) or (b)), and Seller has never been and, to Seller's Knowledge, none of its Representatives has ever been: (1) threatened to be debarred or (2) indicted for a crime or otherwise engaged in conduct for which a person can be debarred, under Section 306(a) or (b) of the Generic Drug Enforcement Act of 1992.

(iii) Seller has provided to Buyer copies of all written communications to or from any Governmental Authority and associated with the Product, including, without limitation, any written communication to or from the FDA. Neither Seller nor any Affiliate owns, controls, or is aware of any filing, submission, or correspondence with, or grant of any approval or clearance by any Governmental Authority with respect to the Product other than the Product NDA.

(iv) Seller possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities required by applicable provisions of Laws.

(v) The Product has not been sold, nor has it been the subject of any applications, filings, or submissions for approval for marketing or sale for human use, in any country other than the United States of America.

(vi) To Seller's Knowledge, the patents associated with the Product and listed in the FDA Publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations", commonly known as the Orange Book, have been listed in compliance with applicable Laws, including all applicable FDA regulations, and consistent with such Laws each such patent listed therein contains at least one claim covering the approved method of using the Product or the drug product (as such terms are used in the applicable regulations). Each of the patents associated with the Product and currently listed in the Orange Book also include at least one claim that can be listed against the strengths of the Product that have been approved but are currently not marketed in the United States.

(d) No Conflicts. Neither the execution, delivery or performance by Seller of this Agreement or the Ancillary Agreements, nor the consummation of the Transactions, will (i) contravene or violate any Law to which Seller is, or its assets or properties are, subject or bound, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Seller; (iii) require the Consent of any Person (except for any Consents obtained at or prior to the Effective Date); or (iv) contravene in any material respect, result in any material breach of or constitute a default in any material respect (or which with the giving of notice or lapse of time, or both, would become such a default) under, give rise to any right of termination, material amendment, material modification, acceleration or cancellation of any material obligation or loss of any material benefit under, or result in the creation of any Encumbrance on any of the assets of Seller (including the Transferred Assets), pursuant to or under, (1) any Law or Governmental Order applicable to Seller or (2) any Contract to which Seller is a party or by which Seller or its assets is bound or subject.

(e) Brokers and Finders. Seller has not employed any broker, finder, investment banker, financial advisor, consultant or intermediary in connection with the Transactions who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof

(f) Inventory. The Inventory is (a) free from any material defect or deficiency, (b) is in good and usable condition for sale and (c) complies with applicable Laws in all material respects.

(g) Intellectual Property.

(i) Seller exclusively owns the Intellectual Property free and clear of all Encumbrances except Permitted Encumbrances. The Intellectual Property will, as of the Effective Date, be transferred to, and controlled by, Buyer on substantially the same terms with which Seller, immediately prior to the Effective Date, owned and controlled such Intellectual Property. To the best of Seller's Knowledge, neither Seller nor any of its Affiliates have or are infringing, misappropriating or otherwise violating (including with respect to the discovery, development, clinical testing, manufacture, distribution, advertising, use, exploitation or sale by Seller or its Affiliates of the Product) the rights of any other Person with regard to Seller's or its Affiliates' possession or use of any Intellectual Property or the sale, marketing, promotion, manufacture, or use of the Product in Seller's or its Affiliates' Product-related business as presently conducted, and, Seller owns or controls any intellectual property rights being transferred pursuant to this Agreement, other than those intellectual property rights to which rights are granted to Seller (or, following the Effective Date, Buyer) under [***]. To Seller's Knowledge, no other Person has or is infringing, misappropriating or otherwise violating any Intellectual Property. No claims against Seller or any of its Affiliates are pending or, to Seller's Knowledge, threatened with regard to (i) Seller's or any of its Affiliates' control or use of any of the Intellectual Property; (ii) the validity, re-examination or enforceability of any Intellectual Property, or (iii) Seller's or any of its Affiliates' manufacture, use, sale, promotion, marketing, or other commercialization of the Product.

(ii) Schedules 1.28(a) and 1.28(b), set forth, as of the date hereof, a complete and accurate list of all Intellectual Property that is owned by Seller or any Affiliate thereof related to the Product (or its manufacture or use). The Intellectual Property has been duly registered or filed with or issued by each appropriate Governmental Authority in the jurisdiction indicated in Schedules 1.28(a), and 1.28(b), and, if applicable, all related necessary affidavits of continuing use have been (or, with respect to licenses, to Sellers' Knowledge have been) timely filed, and all related necessary maintenance fees have been (or, with respect to licenses, to Sellers' Knowledge have been) timely paid to continue all such rights in effect.

(h) [***].

(i) [***].

(ii) [***].

(iii) [***].

(iv) [***].

(i) Sufficiency of Transferred Assets. The Transferred Assets constitute all of the assets necessary to sell, offer for sale, distribute and/or otherwise commercialize the Product as each such activity is currently conducted by Seller and are sufficient to permit Buyer to sell, offer for sale, distribute and/or otherwise commercialize the Product from and immediately after the Closing in substantially the same manner as such activities are currently conducted by Seller.

(j) Absence of Changes. Since March 6, 2019, Seller has not (i) incurred any material Liability outside the ordinary course of business with respect to the Transferred Assets, or (ii) created, caused to be created, or consented to or allowed to be created, any Encumbrance on any of the Transferred Assets.

(k) No Other Representation or Warranties. Except for the representations and warranties contained in this Section 5.1, Seller makes no other express or implied warranty, and Seller hereby disclaims any such warranty or any representation whether by Seller or its respective Representatives or any other Person, as to the condition (financial or otherwise), value or quality of the Product or the Transferred Assets, notwithstanding the delivery or disclosure to Buyer or any of its Representatives or any other Person of any documentation or other information by Seller or any of its Representatives or any other Person with respect to any one or more of the foregoing.

5.2 Buyer's Warranties. Buyer hereby represents and warrants to Seller, as of the Effective Date, as follows:

(a) Organization and Authority of Buyer. Buyer is a corporation, validly existing and in good standing under the Laws of the State of Delaware, with full power and authority to enter into this Agreement and perform its obligations hereunder. This Agreement has been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

(b) Litigation. There are no material Actions or Proceedings pending or, to Buyer's Knowledge, threatened that question the validity of this Agreement or any action taken or to be taken by Buyer in connection herewith, or which individually or in the aggregate, would materially impair the ability of Buyer to perform its obligations hereunder or to consummate the Transactions.

(c) Legal Compliance. Buyer possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities required by applicable Laws.

(d) The Buyer has and will have at Closing, and during the Term of this Agreement, cash available sufficient to pay the Upfront Payment and Additional Payments.

(e) No Conflicts. Neither the execution and the delivery of this Agreement nor the Ancillary Agreements, nor the consummation of the Transactions, will (i) violate Law to which Buyer is, or its assets or properties are, subject, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Buyer, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound or to which any of its assets is subject. Buyer does not need to obtain the Consent of any Person (other than any Consents obtained prior to or at the Effective Date) in order to consummate the Transactions. There is no Action or Proceeding pending or, to the Knowledge of Buyer, threatened against Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with the Transactions.

(f) Independent Investigation. Buyer has conducted its own independent investigation, due diligence, review and analysis of the business, operations, assets, liabilities, results of operations, financial condition, software, technology and prospects of the business related to the Product, which investigation, review and analysis were undertaken by Buyer and its Representatives.

(g) Brokers and Finders. Buyer has not employed any broker, finder, investment banker, financial advisor, consultant or intermediary in connection with the Transactions who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof

(h) Non-Reliance. Buyer agrees and acknowledges that (i) Buyer has relied solely on the representations and warranties set forth in Section 5.1 and (ii) except for the representations and warranties expressly set forth in Section 5.1, as modified by the Disclosure Schedule, neither Seller nor any of its shareholders, trustees or Representatives or any other Person, has made or is making any other representations or warranties, promises, covenants, agreements or guaranties, statutory, common law or otherwise, of any nature, oral or written, past, present or future.

ARTICLE 6
COVENANTS

6.1 Non-Competition. The Parties hereto agree and acknowledge that the provisions of this Agreement shall not be construed to limit or restrict in any manner the rights of Seller or any of its Affiliates to develop, manufacture, use, sell or commercialize in any manner the Product in a generic or other formulation, either in the Territory or outside of the Territory; provided, however, that for a period of eight (8) years commencing on the Effective Date, Seller covenants and agrees not to manufacture or commercialize any product (other than the Product pursuant to the Supply Agreement) containing the same active ingredient and in the same dosage and form as that of the Product. Should any part or provision of this Section 6.1 be held invalid, void, or unenforceable in any court of competent jurisdiction, such invalidity, voidness, or unenforceability will not render invalid, void, or unenforceable any other part or provision of this Agreement. The Parties further agree that if any portion of this Section 6.1 is found to be invalid or unenforceable by a court of competent jurisdiction because its duration, territory, or other provisions are deemed to be invalid or unreasonable in scope, the invalid or unreasonable terms will be replaced by terms that are valid and enforceable and that come closest to expressing the intention of such invalid or unenforceable terms, and any court of competent jurisdiction shall enforce this Section 6.1 as so modified to the maximum extent allowed by Law.

6.2 Use of the Transferred Assets. The Buyer agrees and acknowledges that Seller is not assigning, licensing or conveying any rights to the Buyer outside the

Territory.

6.3 Standards of Quality. Buyer agrees to comply with applicable Laws in the Territory related to the marketing, sale, and distribution of Product.

6.4 Post-Effective Date Agreements. For the period commencing on the Effective Date and ending at the Closing, Seller covenants and agrees with Buyer as follows with respect to the Product NDA:

(a) the Product NDA will be maintained in full force and effect;

(b) no amendment or other modification to the Product NDA will be made without prior written approval of Buyer;

(c) Seller will not authorize any Third Party to sell any products under the Product NDA;

(d) Seller will not authorize any Third Party to make reference to the Product NDA, file any new drug application or other application for marketing authorization that makes reference to the Product NDA, or launch any authorized generic under the Product NDA;

(e) Seller will maintain the confidentiality of any confidential sections of the Product NDA;

(f) Seller will comply with all applicable FDA regulations and applicable Law in connection with any matters related to the Product NDA;

(g) Seller will promptly notify Buyer of any correspondence from FDA or any other Governmental Authority concerning the Product NDA;

(h) Seller will not file any submission or deliver any correspondence concerning the Product NDA to FDA or any other Government Authority without the written consent of Buyer;

(i) Seller will not assign or otherwise modify or transfer title of the Product NDA except as expressly provided for herein or approved in writing by Buyer;

(j) Seller will not create, cause to be created, or consent to or allow to be created, any Encumbrance over the Product NDA; and

(k) Seller will not take any other action that would or could reasonably be expected to inhibit or delay transfer of the Product NDA to Buyer pursuant to Section 3.4(a).

Notwithstanding anything contained herein, the Seller shall not be held responsible for occurrence of any event with respect to the Product NDA due to the acts or omissions of the Buyer.

6.5 Post-Closing Agreements.

(a) Within forty-five (45) Business Days from the Closing Date, the Parties shall enter into a mutually agreeable supply agreement (the 'Supply Agreement") for Seller to manufacture and supply the Product to Buyer. The Seller agrees to provide reasonable support to Buyer in the technology transfer of Product until expiration of such Supply Agreement. The Supply Agreement will contain the following terms and conditions:

(i) the cost to Buyer will be Seller's manufacturing cost plus [***] ([***]%) margin plus a mutually agreed upon annual administrative fee; and

(ii) the term of the Supply Agreement will be through December 31, 2023.

(b) From and after the Closing for a period ending six (6) months after the Closing Date, Buyer agrees to cooperate with Seller in the good faith negotiation of the Novation Agreement with [***]. Buyer further covenants and agrees not to unreasonably withhold its consent or signature to the Novation Agreement, provided, however, that Buyer withholding its consent or signature to the Novation Agreement because the terms and conditions of the final, negotiated Novation Agreement materially deviates from the form attached in Exhibit A which, either (i) increases Buyer's obligations under the [***] or (ii) decreases Buyer's rights and privileges under the [***], will not be considered unreasonable.

6.6 Registrations and Filings. (a) Without prejudice to applicable Laws that may exclude this possibility, from and after the Closing, Buyer shall take the lead in coordinating the NDA transfers. Buyer shall file, or shall cause its Affiliates or designees to file, or, if required by applicable Law, Seller, its Affiliates or designees shall file, applications for the transfer of the NDA in the Territory. (b) For the avoidance of doubt, Seller does not warrant and shall not be responsible for the successful transfer, maintenance or renewal of the NDA after the Closing Date and shall not be obligated to launch the Product in the Territory where it has not been launched before Closing.

6.7 Prescription Drug User Fee Act. From and after the Closing Date, Buyer shall assume and have responsibility for fees or charges associated with the Product first due and payable to the FDA after March 6, 2019, pursuant to the Prescription Drug User Fee Act, and any reauthorization thereto. Seller shall retain full responsibility and liability for all fees or charges first due and payable to the FDA on or prior to the March 6, 2019.

6.8 Confidentiality.

(a) Seller undertakes with Buyer, and Buyer undertakes with Seller, to keep confidential (except as expressly provided in this Agreement) at all times after the date of this Agreement, and not directly or indirectly reveal, disclose or use for its own or any other purposes, any Confidential Information received or obtained as a result of entering into or performing, or supplied by or on behalf of a Party in the negotiations leading to, this Agreement and which relates to: (i) the negotiations relating to this Agreement; or (ii) the subject matter and/or provisions of this Agreement, subject to Section 6.8(b) below.

(b) The prohibition in Section 6.8(a) does not apply if: (i) the information was in the public domain before it was furnished to the relevant Party or, after it was furnished to that Party, entered the public domain otherwise than as a result of a breach by that Party of this Section 6.8 or any written or confidentiality agreement under which such Party is bound; (ii) disclosure is necessary in order to comply with applicable Laws, provided that any such information disclosable pursuant to this Section 6.8(b) shall be disclosed only to the extent required by such Laws and (unless such consultation is prohibited by such Laws or is not reasonably practicable) only after

consultation with Buyer or Seller (as the case may be) or (iii) Buyer is contemplating the sale, assignment, conveyance or other transfer to a Third Party of all or substantially all of its rights, title and interest in and to the Product and/or the Transferred Assets, provided that Buyer shall have entered into a confidentiality agreement with such Third Party no less restrictive than this Section 6.8.

(c) The provisions of the CDA are hereby incorporated herein and shall remain binding and in full force and effect; provided, however, that all obligations of Buyer under the CDA with respect to each of the Transferred Assets shall terminate as of the date of transfer of such Transferred Asset to Buyer pursuant to the terms of this Agreement. Except as otherwise provided herein or in the Ancillary Agreements, Seller shall, and shall cause its Representatives to, treat after the date hereof as strictly confidential all nonpublic, confidential or proprietary information concerning the Transferred Assets, and Seller shall not, after the date hereof, use such information to the detriment of the Buyer.

(d) The Parties further agree that release of any Confidential Information, whether directly or indirectly, would cause irreparable injury to the non-disclosing Party and that the Party whose Confidential Information has been or is being disclosed in violation of this Section 6.8 will, in addition to any other rights and remedies the non-disclosing Party may have at law or in equity, will be entitled to seek an injunction enjoining and restraining the non-disclosing Party from violating or threatening to breach this Section 6.8.

6.9 Commercial Transition (Including Handling of Rebates, Returns, Chargebacks and Price Adjustments)

(a) DSA Fees. Buyer will pay directly to wholesalers all DSA fee invoices received after the date the Inventory is transferred to Buyer pursuant to Section 4.2.

(b) Product Returns. Buyer will pay all wholesaler and retail channel invoices for returned Product received after the date the Inventory is transferred to Buyer pursuant to Section 4.2.

(c) Commercial Payer and Government Utilization rebates. Seller will pay directly to both commercial payers and Governmental Authorities listed on Exhibit F (collectively, the "Payers") all Product rebate invoices and chargebacks received through August 31, 2019. Seller will pay directly to the Payers all invoices and chargebacks received between September 1, 2019 and December 31, 2019, but will submit quarterly invoices to Buyer for reimbursement of such invoices and chargebacks. After December 31, 2019, Seller will not process or pay any Payer invoices for rebates or chargebacks.

(d) Patient Coupons/Co Pay Cards. Seller will continue its co-pay program under its business rules and pay directly all co-pay claims received through August 31, 2019. Seller will not process or pay invoices for any co-pay claims after August 31, 2019.

6.10 Further Assurances. Each Party agrees that subsequent to the Closing Date, at the request of the other Party, it will execute and deliver, or cause to be delivered, to the other Party, such further instruments and take such other action as may be reasonably necessary to carry out the transactions contemplated by this Agreement.

6.11 Costs and Expenses. Except as otherwise expressly provided herein, the Parties shall bear their own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants and independent accountants) incurred in connection with the preparation and execution of this Agreement and consummation of the Transactions, including assistance reasonably requested in consummating the Transactions.

6.12 Tax Matters.

(a) Transfer Taxes. Buyer shall be responsible for and pay all federal, state and local sales, documentary and other transfer Taxes, if any, due as a result of the purchase, sale or transfer of the Transferred Assets in accordance herewith whether imposed by law on Seller or Buyer.

(b) Tax Prorations. Seller will timely pay all Taxes arising out of the ownership, use and sale of the Transferred Assets with respect to transactions or events occurring or periods (or portions thereof) ending on the day prior to the Effective Date. Buyer will timely pay all Taxes arising out of the ownership of the Transferred Assets with respect to transactions or events occurring or periods (or portions thereof) beginning on or after the Effective Date, other than as set forth in Section 6.12(a) above. In the case of any Taxes that are imposed on a periodic basis and are payable for a taxable period that includes (but does not end on) the day prior to the Effective Date, the portion of such Tax which relates to the portion of such taxable period ending on the day prior to the Effective Date will (i) in the case of any personal property, real property or similar ad valorem taxes, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the day prior to the Effective Date and the denominator of which is the number of days in the entire taxable period, and (ii) in the case of any other Taxes, shall be deemed equal to the amount which would be payable if the relevant taxable period ended on the day prior to the Effective Date.

ARTICLE 7
INDEMNIFICATION AND INSURANCE

7.1 Indemnification by Seller. From and after the Effective Date, Seller shall defend, indemnify and hold harmless Buyer and its Representatives from, against and in respect of any and all Losses resulting or arising from or otherwise relating to:

(a) any breach by Seller of any representation or warranty of Seller contained in this Agreement or any Ancillary Agreement;

(b) any breach by Seller of, or failure by Seller to perform, carry out or otherwise fulfill or comply with, any of the covenants, agreements, undertakings or obligations of Buyer contained in this Agreement or any Ancillary Agreement;

(c) any Excluded Liabilities;

(d) any Liabilities of Seller arising out of or in connection with any breaches or defaults by Seller under the [***] arising prior to the Effective Date; and

(e) any Taxes of Seller not otherwise the responsibility of Buyer pursuant to this Agreement.

7.2 Indemnification by Buyer. From and after the Effective Date, Buyer shall indemnify and hold harmless Seller and its Representatives from, against and in respect of any and all Losses resulting or arising from or otherwise relating to:

(a) any breach by Buyer of any representation or warranty of Buyer contained in this Agreement or any Ancillary Agreement;

(b) any breach by Buyer of, or failure by Buyer to perform, carry out or otherwise fulfill or comply with, any of the covenants, agreements, undertakings or obligations of Buyer contained in this Agreement or any Ancillary Agreement;

(c) any Assumed Liabilities;

(d) use of the Marketing Collateral(s) by Buyer after the Effective Date; and

(e) any Taxes of Buyer not otherwise the responsibility of Seller pursuant to this Agreement.

7.3 Method of Asserting Claims.

(a) All claims for indemnification under or with respect to this Agreement or any Ancillary Agreements ("Indemnity Claims") made by a Party or its Representatives hereunder (the "Indemnified Party") shall be asserted and resolved as set forth in this Section 7.3. In the event that any written claim or demand for which a Party (the "Indemnifying Party") would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a Third Party, such Indemnified Party shall promptly, but in no event more than thirty (30) days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (the "Claim Notice"). All indemnity claims by any Indemnified Party that do not involve Third Party claims shall be communicated via a Claim Notice to the other Party promptly following discovery of such claim. The failure or delay of the Indemnified Party to provide any such Claim Notice does not release the Indemnifying Party from any of its obligations under this Article 7 unless (and then solely to the extent that) the Indemnifying Party is prejudiced by such delay.

(b) The Indemnifying Party shall have fifteen (15) days from the delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not it accepts the Indemnity Claim set forth in the Claim Notice and, in the case of a Third Party claim, whether or not it desires to defend the Indemnified Party against such claim or demand. An election to assume the defense of such claim or demand shall not be deemed to be an admission that the Indemnifying Party is liable to the Indemnified Party in respect of such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party; provided, however, that the amount of such expenses shall be a liability of the Indemnifying Party hereunder, subject to the limitations set forth in this Article 7. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the claim within such fifteen (15)-day period, the Indemnified Party may assume the defense thereof and the reasonable fees and disbursements of counsel for the Indemnified Party shall be deemed Losses hereunder if the Indemnifying Party is ultimately determined to be liable for the Losses that are the subject of the Indemnity Claim set forth in the Claim Notice pursuant to this Agreement, subject to the limitations set forth in this Article 7.

(c) In the event that it is ultimately determined that the Indemnifying Party is not obligated to indemnify, defend or hold the Indemnified Party harmless from and against any Third Party claim, the Indemnified Party shall reimburse the Indemnifying Party for any and all costs and expenses (including without limitation, attorney's fees and court costs) actually incurred by the Indemnifying Party in its defense of the Third Party claim. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings. If any Indemnified Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense.

(d) The Indemnified Party shall not settle a claim or demand without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, conditioned or delayed. The Indemnifying Party may settle any claim or demand solely for monetary damages; it being understood that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, conditioned or delayed) settle, compromise or offer to settle or compromise any such claim or demand on a basis which would result in the imposition of a consent order, injunction or decree that would substantially restrict the future activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof.

(e) To the extent the Indemnifying Party shall control or participate in the defense or settlement of any Third Party claim or demand, the Indemnified Party will give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party.

(f) The controlling party, in either case, shall select counsel, contractors, experts and consultants of recognized standing and competence, shall take reasonable steps necessary in the investigation, defense or settlement thereof, and shall diligently and promptly pursue the resolution thereof.

(g) Any notice of a claim by reason of any of the warranties or covenants contained in this Agreement shall state specifically the warranty or covenant with respect to which the claim is made, the facts giving rise to an alleged basis for the claim, and the amount of the liability asserted against the Indemnifying Party by reason of the claim.

7.4 Survival. The representations, warranties, covenants and agreements of the Parties contained herein shall survive without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue for the applicable statute of limitations.

7.5 DAMAGES LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, NO PARTY OR ITS REPRESENTATIVES SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PERSON, EITHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR ANY DAMAGES ASSOCIATED WITH ANY LOST PROFITS OR LOST OPPORTUNITIES OF SUCH OTHER PERSON (INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION) RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH OTHER PARTY.

7.6 Limitation of Liability of Seller. Notwithstanding the foregoing, except for Losses directly or indirectly related to, incurred in connection with or as a result of fraud, intentional misconduct or willful breach, the maximum amount of indemnifiable Losses which may be recovered cumulatively from Seller arising out of or resulting from the indemnity obligations set forth in Section 7.1(a) shall be an amount equal to [***].

7.7 Cooperation. The Parties shall cooperate with each other with respect to resolving any claim or liability with respect to which one Party is obligated to indemnify the other Party hereunder, including by making Commercially Reasonably Efforts to mitigate or resolve any such claim or liability.

ARTICLE 8
RESERVED

8.1 Right to Terminate for Breach. Either Party may terminate this Agreement immediately by written notice to the other Party if the other Party materially breaches any terms and conditions and covenants under this Agreement, including default of payment obligations, which breach remains uncured for thirty (30) Business Days measured from the date written notice of such breach is given to the breaching Party, which notice shall specify the nature of the breach and demand its cure.

8.2 Post Termination. In the event of termination of this Agreement under Section 8.1, the Transferred Assets (including without limitation, any Confidential Information) shall be returned to the Seller without any demur, delay or protest; *provided, however*, that: (i) any such return of the Transferred Assets will be first subject to the acceptance by [***] of such transfer and Buyer's compliance with any requirements of the [***] with respect to such transfer; and (ii) Buyer will not be liable for any delay or refusal by [***] to accept such transfer, provided that Buyer has employed reasonable efforts to secure such transfer back to Seller in a prompt manner. Buyer shall perform all required measures at having the return to the Seller the Product NDA, including, without limitation, approval of all necessary filing of all relevant documents with the Government Authority in the Territory in order to transfer the Product NDA to the Seller. In the event that the Buyer fails to return the Transferred Assets to the Seller, the Seller shall have the right to seek appropriate remedies as may be available with the Seller under law or equity.

ARTICLE 9
MISCELLANEOUS

9.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) upon delivery by personal delivery, (b) upon delivery by a nationally-recognized overnight courier service, or (c) three days after mailing, if mailed, certified or registered mail (return receipt requested), postage prepaid, each to the other Party at the following address (or at such other address as shall be given in writing by any Party to the other in accordance with these provisions; provided, however, that a notice of change of address shall be effective only upon receipt thereof):

If to the Buyer, to:

Journey Medical Corporation
9237 Via De Ventura Suite 105
Scottsdale, AZ 85258
Attn: Claude Maraoui (President and CEO)
[***]

With a copy to:

[***]

If to the Seller to:

Sun Pharmaceutical Industries, Inc.
[***]

or to such other Person or address as any Party shall specify by notice in writing to the other Party.

9.2 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of any Ancillary Agreements, the provisions of this Agreement shall prevail.

9.3 Assignability; Successors and Assigns. Neither this Agreement nor any of the rights or obligations of the Parties hereunder may be assigned by any Party without the prior written consent of the other Party, provided that a Party may assign its rights and obligations under this Agreement, without the prior written consent of the other Party, to an Affiliate or to a successor of the assigning Party by reason of merger, sale of all or substantially all of its assets or any similar transaction. Any attempted assignment or delegation in contravention hereof shall be null and void. Subject to the foregoing, this Agreement and all rights and powers granted and obligations created hereby will bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state and subject to Section 9.5, the courts in the State of New York shall have exclusive jurisdiction.

9.5 Dispute Resolution. In the event of any dispute arising out of or in connection with this Agreement, the dispute shall be settled by arbitration in accordance with American Arbitration Association and its rules which are deemed to be incorporated by reference to this section, for the time being in force. The arbitral tribunal shall consist of a sole arbitrator appointed in accordance with the said rules. The seat of arbitration shall be New York and the language of the arbitration shall be English. The award rendered by the sole arbitrator shall be final and binding and enforceable in any court of competent jurisdiction.

9.6 Headings. The headings preceding the text of the Sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All words used in this Agreement will be construed to be of such gender or number as the context may require.

9.7 Amendment and Waiver. The Parties may, by mutual written agreement, amend this Agreement in any respect, and any Party, as to such Party, may (a) extend the time for the performance of any of the obligations of any other Party, and (b) waive (i) any inaccuracies in warranties by any other Party, (ii) compliance by any other Party with any of the agreements contained herein and performance of any obligations by such other Party, and (iii) the fulfillment of any condition that is precedent to the

performance by such Party of any of its obligations under this Agreement. To be effective, any such amendment or waiver must be in writing and be signed by both Parties.

9.8 Entire Agreement. This Agreement, together with the Ancillary Agreements, shall constitute the entire understanding and agreement between the Parties in relation to the subject matter of this Agreement and shall together supersede all previous agreements between the Parties in relation to the same subject matter. It is further agreed that neither Party has entered into this Agreement in reliance upon any warranty or undertaking of the other Party which is not expressly set out or referred to in this Agreement.

9.9 Incorporation of Schedules. All Exhibits and Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein.

9.10 Press Release. Neither Party shall issue any press release, trade announcement or make any other public announcement with regard to the Transactions without the other Party's prior written consent, which shall not be unreasonably withheld. This restriction shall not apply to announcements required by any Government Authority. However, in such event the Parties shall, to the extent reasonably practicable, coordinate the wording of any such announcements. To the extent any Party is required to file a copy of this Agreement or any Ancillary Agreement as an exhibit to any filings with, or otherwise publicly disclose the terms hereof or thereof to, the Governmental Authority, the Parties will coordinate in advance on the form of redacted version of this Agreement or applicable Ancillary Agreement or the terms to be so filed or disclosed and permit the other Party to provide comments and take such comments into account in good faith prior to making such filing.

9.11 No Third Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any other Person any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

9.12 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement.

9.13 Severability. Each of the agreements, undertakings, covenants, warranties, indemnities and other obligations of the Parties entered pursuant to this Agreement are considered reasonable by the Parties hereto. If any provision of this Agreement, an Ancillary Agreement, or any part thereof is held void or unenforceable or in conflict with the laws of any relevant jurisdiction, the Parties hereto shall negotiate in good faith to modify this Agreement or Ancillary Agreement, as applicable, so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

9.14 Relationship. Nothing in this Agreement shall be construed as creating a relationship of a joint venture, partners, employer-employee, or agent. Neither Party has the authority to create any obligations for the other or to bind the other to any representation or document.

9.15 Counterparts. This Agreement may be executed in two counterparts, each of which shall for all purposes be deemed to be an original and both of which shall, when taken together, constitute one instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

(Signatures appear on the following page)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

JOURNEY MEDICAL CORPORATION

By:/s/ Claude Maraoui
Name: Claude Maraoui
Title: President & CEO

SUN PHARMACEUTICAL INDUSTRIES, INC.

By:/s/ Abhay Gandhi
Name: Abhay Gandhi
Title: CEO — North America

Exhibit 10.12

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

By and between

JOURNEY MEDICAL CORPORATION

and

SUN PHARMACEUTICAL INDUSTRIES, INC.

Dated: December 18, 2020

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT BOTH (I) IS NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***].

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement"), dated December 18, 2020 ("Effective Date"), is entered into by and between Journey Medical Corporation, a Delaware corporation having its principal place of business at 9237 Via De Ventura Suite 105, Scottsdale, AZ 85258 (the " Buyer") and Sun Pharmaceutical Industries, Inc, a Delaware corporation, located at [***] (the "Seller"). Buyer and Seller are referred to herein individually as a "Party" and collectively as the "Parties".

WHEREAS, Seller owns and possesses the Transferred Assets (as defined herein).

WHEREAS, Seller desires to sell, transfer and assign to Buyer, and Buyer desires to purchase from Seller all of Seller's right, title and interest in the Transferred Assets (as defined herein) with respect to the Territory upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

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

1.1 "Action or Proceeding" means any action, suit, proceeding, arbitration, court order, inquiry, hearing, assessment with respect to fines or penalties or litigation (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

1.2 "Additional Payments" shall have the meaning set for in Section 4.1(c).

1.3 "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person from time to time. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means (a) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of such Person (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity).

1.4 "Ancillary Agreements" means, other than this Agreement, all other agreements, certificates and documents signed and delivered by any party in connection with this Agreement or the Transactions contemplated hereby.

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1.5 "Assumed Liabilities" shall have the meaning set forth in Section 2.6.

1.6 "Business Day" means a day other than a Saturday, Sunday, bank or other public holiday in the State of New York, USA.

1.7 "CDA" means the Confidentiality Agreement by and between Buyer and Seller entered into on September 06, 2018.

1.8 "Claim Notice" shall have the meaning set forth in Section 7.3(a).

1.9 "Closing" shall have the meaning set forth in Section 3.1.

1.10 "Closing Date" shall have the meaning set forth in Section 3.1.

1.11 "Commercially Reasonable Efforts" shall mean the diligent, good faith efforts, consistent with general practices and standards in the pharmaceutical industry with those used in the pharmaceutical industry of similar size and with similar resources of Buyer, taking into account all scientific, commercial and other relevant factors, would normally use to accomplish a similar objective for its product having similar technical and regulatory factors (including safety and efficacy), similar expected and actual time and cost to commercialize, similar commercial and profit potential, competitive landscape, a similar proprietary position and strategic value, and that is at a similar stage in

its product life cycle as the applicable Product, in each case based on existing and reasonably anticipated future conditions. Commercially Reasonable Efforts shall be determined on a market-by-market basis for the Product.

1.12 "Confidential Information" means Confidential Information as defined in the CDA.

1.13 "Consent" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person, including any Governmental Authority.

1.14 "Disclosure Schedule" means the disclosure schedule delivered by Seller to Buyer simultaneously with the execution of this Agreement and attached herewith as Schedule 1.14.

1.15 "Encumbrance" means any charge, equitable interest, hypothecation, lien, mortgage, pledge, security interest or other encumbrance of any kind known to Seller prior to the Effective Date.

1.16 "Excluded Liabilities" shall have the meaning set forth in Section 2.7.

1.17 "FDA" means the United States Food and Drug Administration and any successor agency thereto.

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1.18 "FDA Act" means the U.S. Federal Food, Drug and Cosmetic Act, as amended, and the rules and regulations promulgated thereunder.

1.19 "GAAP" means general accounting principles in United States of America.

1.20 "Governmental Authority" means (a) any federal, state, regional, county, city, municipal or local government, whether foreign or domestic and (b) any governmental or quasi-governmental authority of any nature, including any regulatory or administrative agency, commission, department, board, bureau, court, tribunal, arbitrator, arbitral body, agency, ministry, branch, official entity or other administrative or regulatory body obtaining authority from any of the foregoing, and (c) any supra-national organization, state, county, city or other political subdivision.

1.21 "Governmental Order" means any order, writ, judgment, citation, injunction, decree, ruling, charge, stipulation, determination or award entered by any Governmental Authority.

1.22 "Indemnified Party" shall have the meaning set forth in Section 7.3(a).

1.23 "Indemnifying Party" shall have the meaning set forth in Section 7.3(a). 1.24

1.24 "Indemnity Claims" shall have the meaning set forth in Section 7.3(a).

1.25 "Intellectual Property" means, (a) all trademarks, service marks, trade dress, logos, and trade names solely and exclusively related to the marketing, distribution, advertising and sale of the Product, which are listed on Schedule 1.25(a), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith (the "Assigned Trademarks"); (b) the domain names listed on Schedule 1.25(b) and the digital graphics files supporting such site (the "Assigned Domain Names"); and (c) all Know-How owned or controlled by Seller of any Affiliate thereof solely and exclusively relating to, or necessary for, the manufacture, use, sale, import, development, or commercialization of the Product.

1.26 "Knowledge" means (a) in the case of Seller, the actual knowledge of the applicable Persons set forth onSchedule 1.26(a), and (b) in the case of Buyer, the actual knowledge of Buyer set forth on Schedule 1.26(b).

1.27 "Know-How" means all technical, scientific and other know-how and information, trade secrets, knowledge, technology, inventions, methods, processes, formulas, instructions, technical assistance, designs, drawings, assembly procedures, computer programs, specifications, data, results, and other material, manufacturing procedures, test procedures and purification and isolation techniques (whether or not, in each case, confidential, proprietary or patentable), in written, electronic or any other form.

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1.28 "Laws" means any federal, state, local, foreign or multinational laws, statutes, ordinances, regulations, rules, standards, codes, Governmental Orders, writs, injunctions, decrees, arbitration awards, agency or regulatory requirements or licenses or permits of any kind whatsoever of any Governmental Authority, all as amended from time to time.

1.29 "Liabilities" shall mean, collectively, any debt, obligation, duty, guaranty, claim, loss, damage, deficiency, cost, expense, fees, commitment, obligation, responsibility, or liability of any nature (including such debt, obligation, duty, liability, or the like, that is primary or secondary, direct, absolute or contingent, fixed or otherwise, whether asserted or unasserted, whether accrued or accrued, whether liquidated or unliquidated, whether due or to become due, or known or unknown) regardless of whether such debt, obligation, duty, liability, or the like, would be required to be disclosed on a balance sheet, and regardless of whether such debt, obligation, duty, liability, or the like, is immediately due and payable.

1.30 "Losses" shall mean any and all losses, damages, obligations, liabilities, Taxes, fines, fees, costs, expenses, lost profits, diminution in value, penalties, interest, awards, judgments, claims, demands, actions, suits and settlements of any kind, including attorneys' and consultants' fees and expenses and other costs and expenses.

1.31 "Manufacturing and Packaging Assets" shall mean the materials solely and exclusively related to the Product as set forth inSchedule 1.31.

1.32 "Marketing Collateral" shall mean the materials solely and exclusively related to the Product as set forth inSchedule 1.32.

1.33 "Notice Period" shall have the meaning set forth in Section 7.3(b). 1.34

1.34 "Payer" shall have the meaning set forth in Section 6.9.

1.35 "Permitted Encumbrance" means (i) any Encumbrance for Taxes, assessments and other governmental charges that are not yet due and payable, (ii) with respect to licenses, permits or contracts, any restrictions, obligations, limitations or other Encumbrance contained in such license, permit or contract or existing at Law or under the regulatory regime pursuant to which such permit or license is granted that do not materially impair the current use or sale of the Product, or (iii) with respect to the NDA, any restrictions, obligations, limitations or other Encumbrance contained in such NDA or existing at Law or under the regulatory regime pursuant to which such NDA is granted that do not materially impair the current use or sale of the Product.

1.36 "Person" means any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, or other entity or Governmental Authority.

1.37 "Product" means [***] as described in the Product NDA.

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1.38 "Product NDA" the New Drug Applications (as defined in and regulated under the FDA Act) identified as [***] and [***] including all applications therefor, and all amendments, modifications, supplements, submissions, and updates with respect thereto.

1.39 "Purchase Price" shall have the meaning set forth in Section 4.1.

1.40 "Tax" or "Taxes" means any taxes or similar assessments of any kind whatsoever including, but not limited to income, franchise, trade, capital, withholding, payroll, unemployment insurance, social security, gross receipts, sales and use, value added, excise, real property and personal property taxes, together with all interest, penalties and additions imposed with respect to any such taxes.

1.41 "Territory" means the entire world.

1.42 "Third Party" means any Person other than a Party or any of their respective Affiliates.

1.43 "Transferred Assets" shall have the meaning set forth in Section 2.1.

1.44 "Transactions" shall have the meaning set forth in Section 3.2(a).

1.45 "United States" means the United States of America and, for the sake of clarity, the Commonwealth of Puerto Rico.

1.46 "Upfront Payment" shall have the meaning set forth in Section 4.1(b).

1.b. Interpretation. Unless the context otherwise requires, the terms defined in this Article 1 shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms defined herein. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." Any reference to any contract or other document or instrument or to any Law is to it as amended and supplemented from time to time through the date of the Closing (and in the case of any Law, to any successor provisions, and to any rules and regulations promulgated thereunder, in effect as of the date of this Agreement), unless the context requires otherwise.

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ARTICLE 2
PURCHASE AND SALE OF THE TRANSFERRED ASSETS

2.1 Transfer of Assets. Upon the terms and subject to the conditions set forth herein, in accordance with Section 2.2, Seller hereby sells, conveys, transfers, assigns and delivers to Buyer on an as-is basis, and Buyer hereby purchases from Seller all of Seller's right, title and interest in and to the following assets with respect to the Territory to the extent existing and controlled by Seller (collectively, the "Transferred Assets"), free and clear of all Encumbrances (except Permitted Encumbrances):

(a) the Product NDA;

(b) all Intellectual Property and Manufacturing and Packaging Assets.

2.2 Timing of Transfer of Transferred Asset. The Parties hereby agree and acknowledge that (a) the Intellectual Property and shall be transferred by Seller to Buyer on the Effective Date, (b) the Manufacturing and Packaging Assets as set forth on Schedule 1.31 shall be transferred by Seller to Buyer within ten (10) Business Days of the Effective Date, and (c) the Product NDA shall be transferred by Seller to Buyer on the Closing Date.

2.3 License to Marketing Collateral. Solely to the extent necessary for Buyer to market the Product in the Territory, Seller hereby grants to Buyer a limited, non-exclusive, non-transferable and royalty free license to Seller's rights in the Marketing Collateral. Upon the terms and subject to the conditions set forth herein, on the Effective Date, Seller shall promptly deliver to Buyer the Marketing Collateral. For the avoidance of doubt, nothing herein shall be construed as a grant or license of any rights to any Seller trademark, service mark, trade dress, logo, trade name or corporate name similar or related thereto other than those specifically included in the Transferred Assets.

2.4 Record Retention by Seller. Buyer acknowledges and agrees that Seller may retain for archival purposes and for purposes of complying with the applicable Laws and for legal and regulatory purposes as sellers of pharmaceutical products, one copy of all or any part of the documentation that Seller delivers to Buyer pursuant to Section 2.1.

2.5 Other Assets Excluded. Other than the Transferred Assets set forth in Section 2.1, Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller not specifically related to the Product, including but not limited to Seller's trademarks, trade dress, logos, corporate designs, and the like that are incorporated in the Marketing Collateral and in the digital graphics files forming part of the Intellectual Property, and all such other assets and properties shall be excluded from the Transferred Assets.

2.6 Assumption of Liabilities. Upon the terms and subject to the conditions set forth herein, from and after the Effective Date, Buyer shall assume, be responsible for and pay, and perform and discharge when due, the following Liabilities of Seller (collectively, the "Assumed Liabilities"): (a) all of the Liabilities of Seller that arise out of or are related to the Product and the Intellectual Property and the Transferred Assets for period after the Effective Date, including any commercial and governmental rebates and chargebacks, patient vouchers or coupons granted to managed healthcare organizations, pharmacy benefit managers and Governmental Authorities and their agencies, purchasers and customers; and (b) all of the Liabilities of Seller that arise out of or are related to the Product NDA.

2.7 Non-Assumption of Liabilities. Other than the Assumed Liabilities, neither Buyer nor any of its Affiliates assume or in any way undertake to pay, perform, satisfy or discharge any Liability or other obligation whatsoever of Seller, including, without limitation, any and all Liabilities for Taxes, trade accounts payable and employee benefits occurring prior to the Effective Date (the "Excluded Liabilities"). For the avoidance of doubt, the Excluded Liabilities include any and all Liabilities and Actions or Proceedings directly or indirectly involving personal injury or bodily harm arising out of, in connection with or related to events, circumstances and conditions occurring or existing before the Effective Date. Seller will promptly pay and discharge all Excluded Liabilities in the ordinary course of business.

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ARTICLE 3
CLOSING & CONDITIONS PRECEDENT

3.1 Closing. The consummation of the purchase and sale of the Transferred Assets contemplated hereby (the "Closing") will take place on the date of receipt of the Upfront Payment by Seller pursuant to Section 4.1(b) or, if all the conditions set forth in Sections 3.2 are not then satisfied or waived, the first such Business Day thereafter on which they are waived or satisfied (the "Closing Date"). The Closing shall be effective as of 12:01 AM Eastern Standard Time on the Closing Date.

3.2 Conditions to Closing.

(a) General Conditions. The obligation of the Parties to consummate the transactions contemplated by this Agreement (the "Transactions") at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by both Parties):

(i) No Actions or Proceedings. No Action or Proceeding has been instituted or threatened prior to or on the Closing Date before any Governmental Authority pertaining to the Transactions, the result of which could prevent or make illegal the consummation of the Transactions.

(ii) No Governmental Order. There is not in force any Governmental Order by or before any Governmental Authority of competent jurisdiction restraining, enjoining, prohibiting, invalidating or otherwise preventing the consummation of the Transactions.

(b) Conditions to Seller's Obligations. The obligation of Seller to consummate the Transactions at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by Seller):

(i) True Representations and Warranties. The representations and warranties of Buyer made in Article 5 of this Agreement shall be true and correct as of the Closing Date. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Buyer by the time of the Closing.

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(ii) Delivery of Documents. Buyer has executed and delivered all documents, certificates, instruments and schedules required under Section 3.2(b) to Seller;

(iii) Officer's Certificate. Buyer shall have delivered to Seller a certificate dated as of the Closing Date and signed by an authorized officer of Buyer to the effect that the conditions specified in Sections 3.2(b)(i) and (ii) have been satisfied by Buyer; and

(c) Conditions to Buyer's Obligations. The obligation of Buyer to consummate the Transactions at the Closing is subject to the fulfillment of each of the following conditions prior to or at the Closing (any or all of which may be waived in writing in whole or in part by Buyer):

(i) True Representations and Warranties. The representations and warranties of Seller made in Article 5 of this Agreement shall be true and correct as of the Closing Date. Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller by the time of the Closing.

(ii) Consents. Seller shall have received and delivered to Buyer all Consents as required in order to assign and transfer to Buyer the Transferred Assets;

(iii) Delivery of Documents. Seller has executed (if applicable) and delivered all documents, certificates, instruments and schedules required under Section 3.2(c) to Buyer; and

(iv) Officer's Certificate. Seller shall have delivered to Buyer a certificate dated as of the Closing Date and signed by an authorized officer of Seller to the effect that the conditions specified in Sections 3.2(c)(i) through (iii) have been satisfied by Seller.

3.3 Closing Deliverables. At the Closing, the following shall be delivered:

(a) Buyer shall deliver to Seller:

(i) a letter to the FDA, substantially in the form of Exhibit A attached hereto (the "Buyer FDA Letter"), executed by Buyer, accepting the transfer of the Product NDA to Buyer;

(ii) a trademark assignment, substantially in the form of Exhibit B attached hereto (the "Trademark Assignment"), executed by Buyer, effecting the assignment and transfer to Buyer of the Assigned Trademarks;

(iii) a domain name assignment, substantially in the form of Exhibit C attached hereto (the "Domain Assignment"), executed by Buyer, effecting the assignment and transfer to Buyer of the Assigned Domain Names; and

(iv) the certificate required to be delivered by Buyer under Section 3.2(b) duly executed by an authorized officer of Buyer.

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(b) Seller shall deliver to Buyer:

(i) a letter to the FDA, substantially in the form of Exhibit E attached hereto (the "Seller FDA Letter"), executed by Seller, informing FDA of the transfer of the Product NDA to Buyer;

(ii) A copy of the Trademark Assignment executed by Seller;

(iii) A copy of the Domain Name Assignment executed by Seller; and

(iv) the certificate required to be delivered by Seller under Section 3.2(c) duly executed by an authorized officer of Seller.

ARTICLE 4
PRICE & TERMS

4.1 Purchase Price. As consideration for the Transferred Assets, Buyer shall pay to Seller the following (together, the "Purchase Price") by wire transfer of federal funds pursuant to written instructions delivered by Seller to Buyer:

(a) Two Hundred Thousand U.S. Dollars (U.S. $200,000) upon execution of the non-binding term sheet between Buyer and Seller, which the Buyer has paid to the Seller;

(b) One Million Eight Hundred Thousand U.S. Dollars (U.S. $1,800,000) by January 1, 2021 ("Upfront Payment");

(c) Additional payments, totaling Two Million U.S. Dollars ($2,000,000) of the amounts set forth below on the dates set forth below (collectively "Additional Payments"):

(i) Five Hundred Thousand U.S. Dollars (U.S. $500,000) by April 1, 2021;

(ii) Five Hundred Thousand U.S. Dollars (U.S. $500,000) by July 1, 2021; and

(iii) One Million U.S. Dollars (U.S. $1,000,000) by [***].

4.2 Submission of FDA Letter. Buyer shall send Buyer FDA Letter to the FDA, and Seller shall send Seller FDA Letter to the FDA, within ten (10) Business Days after Closing.

4.3 Taxes. Buyer shall be responsible for and pay all Taxes imposed in connection with the transactions provided for in this Agreement (excluding any income tax and capital gains tax on Seller), including without limitation sales taxes, value added taxes, transfer taxes and recording fees, if any, imposed upon the transfer of the Transferred Assets, and any withholding taxes.

4.4 Late Payment. Seller shall be entitled to charge simple interest at the rate of [***] percent ([***]%) per annum, based on a three hundred and sixty-five (365) day year, on any amounts overdue, from the due date for payment until receipt by Seller of the full amount, without prejudice to any other right or remedy of Seller.

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ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Seller's Warranties. Except as set forth on the Disclosure Schedule, as on the Effective Date and through Closing, Seller represents and warrants to Buyer as follows:

(a) Organization and Authority. Seller is validly existing and in good standing under the Laws of the State of Delaware, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement has been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been, duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Seller enforceable in accordance with their terms.

(b) Title. Seller owns and has good and marketable title to the Transferred Assets, free and clear of all Encumbrances except Permitted Encumbrance. There are no adverse claims of ownership to the Transferred Assets and, to Seller's Knowledge, Seller has not received written notice that any individual or entity has asserted a

claim of ownership or right of possession or use in or to any of the Transferred Assets. (i) As of the Effective Date, Buyer will acquire from Seller good and marketable title to the Transferred Assets other than the Product NDA, and (ii) at Closing, Buyer will acquire from Seller good and marketable title to the Product NDA.

(c) Litigation; Legal Compliance.

(i) There is no material Action or Proceeding pending or, to Seller's Knowledge, threatened, with respect to the Transferred Assets, that affects or, if successful, would affect the validity of this Agreement or any action taken or to be taken by Seller in connection herewith, or which individually or in the aggregate, would materially impair the ability of Seller to perform its obligations hereunder or to consummate the Transactions contemplated by this Agreement or the Ancillary Agreements.

(ii) Neither Seller nor any officer, employee, agent, contractor or distributor of Seller has committed or been convicted of any crime or engaged in any conduct for which debarment is mandated by 21 U.S.C. § 335a(a) or any similar law or authorized by 21 U.S.C. § 335a(b) or any similar applicable Law. Neither Seller nor any officer, employee, agent, contractor or distributor of Seller has been convicted of any crime or engaged in any conduct for which such person could be excluded from participating in federal health care programs under Section 1128 of the Social Security Act of 1935, as amended, or any similar law. No Actions or Proceedings that could reasonably be expected to result in a debarment or exclusion are pending or threatened against Seller or any of its directors, officers, employees or agents. Seller has never been: (i) debarred or (ii) convicted of a crime for which a person can be debarred under Section 306(a) of the Generic Drug Enforcement Act of 1992 (Section 306 (a) or (b)), and Seller has never been and, to Seller's Knowledge, none of its employees, Affiliates or agents has ever been: (i) threatened to be debarred or (ii) indicted for a crime or otherwise engaged in conduct for which a person can be debarred, under Section 306(a) or (b) of the Generic Drug Enforcement Act of 1992.

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(iii) Seller has provided to Buyer copies of all written communications to or from any Governmental Authority and associated with the Product, including, without limitation, any written communication to or from the FDA.

(iv) Seller possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities, required by applicable provisions of Laws.

(d) No Conflicts. Neither the execution and the delivery of this Agreement or the Ancillary Agreements, nor the consummation of the Transactions contemplated hereby and thereby, will (i) violate any material applicable Laws to which Seller is, or its assets or properties are, subject, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Seller.

(e) Brokers and Finders. Seller has not employed any broker, finder, consultant or intermediary in connection with the Transactions contemplated by this Agreement who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof.

(f) Intellectual Property.

(i) Seller exclusively owns the Intellectual Property free and clear of all Encumbrances except Permitted Encumbrances. The Intellectual Property will, as of the Effective Date, be transferred to, and controlled by Buyer on substantially the same terms with which Seller, immediately prior to the Effective Date, owned and controlled such Intellectual Property. To Seller's Knowledge, (i) Seller has not and is not infringing, misappropriating or otherwise violating (including with respect to the discovery, development, clinical testing, manufacture, distribution, advertising, use, exploitation or sale by Seller of the Product) the rights of any other Person with regard to Seller's possession or use of any Intellectual Property for its sale of the Product as presently conducted. To Seller's Knowledge, no other Person has or is infringing, misappropriating or otherwise violating the Intellectual Property. No claims against Seller are pending or, to Seller's Knowledge, threatened with regard to (i) the control or use of any of the Intellectual Property; or (ii) the validity or enforceability of any Intellectual Property.

(ii) Schedule 1.25 sets forth, as of the date hereof, a complete and accurate list of all Intellectual Property owned by Seller related to the Product that is being transferred to Buyer. To Seller's Knowledge, all Intellectual Property owned by Seller that is related to the Product has been duly registered or filed with or issued by each appropriate Governmental Authority in the jurisdiction indicated in Schedule 1.25, all related necessary affidavits of continuing use have been (or, with respect to licenses, to Seller's Knowledge have been) timely filed, and all related necessary maintenance fees have been (or, with respect to licenses, to Seller's Knowledge have been) timely paid to continue all such rights in effect.

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(iii) No Other Representation or Warranties. Except for the representations and warranties contained in this Section 5.1, Seller makes no other express or implied warranty, and Seller hereby disclaims any such warranty or any representation whether by Seller or its respective officers, directors, employees, agents or representatives or any other Person, as to the condition (financial or otherwise), value or quality of the Product or the Transferred Assets, notwithstanding the delivery or disclosure to Buyer or any of its officers, directors, employees, agents or representatives or any other Person of any documentation or other information by Seller or any of its officers, directors, employees, agents or representatives or any other Person with respect to any one or more of the foregoing.

5.2 Buyer's Warranties. Buyer hereby represents and warrants to Seller, as of the Effective Date and through the Closing Date, as follows:

(a) Organization and Authority of Buyer. Buyer is validly existing and is in good standing under the Laws of the State of Delaware, with full power and authority to enter into this Agreement and perform its obligations hereunder. This Agreement has been, and upon execution of each of the Ancillary Agreements, such Ancillary Agreements will have been duly and validly authorized, executed and delivered by, and constitute the legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

(b) Litigation. There are no material Actions or Proceedings pending, or to Buyer's Knowledge, threatened or anticipated, that questions the validity of this Agreement or any action taken or to be taken by Buyer in connection herewith, or which individually or in the aggregate, would materially impair the ability of Buyer to perform its obligations hereunder or to consummate the Transactions contemplated by this Agreement or the Ancillary Agreements.

(c) Legal Compliance. Buyer possesses all material registrations, rights of reference, approvals, licenses, consents, agreements, permits and other authorizations from Governmental Authorities, required by applicable provisions of Laws.

(d) Buyer has and will have at Closing cash, and during the Term of this Agreement, cash available sufficient to pay the Upfront Payment and Additional Payments.

(e) No Conflicts. Neither the execution and the delivery of this Agreement nor the Ancillary Agreements, nor the consummation of the Transactions contemplated hereby and thereby, will (i) violate any material applicable Laws to which Buyer is, or its assets or properties are, subject, (ii) contravene, conflict with or result in a breach or violation of any provision of the charter or bylaws of Buyer, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any agreement, contract, lease, license, instrument, or other arrangement to which Buyer is a party or by which it is bound or to which any of its assets is subject. Buyer does not need to give any material notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Authority or any other Person in order to consummate the Transactions contemplated by this Agreement or the Ancillary Agreements. There is no proceeding pending or, to the Knowledge of Buyer, threatened against Buyer that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with the Transactions contemplated by this Agreement or the Ancillary Agreements.

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(f) Independent Investigation. Buyer has conducted its own independent investigation, due diligence, review and analysis of the business, operations, assets (including contracts), liabilities, results of operations, financial condition, software, technology and prospects of the business related to the Product, which investigation, review and analysis were undertaken by Buyer and its Affiliates and representatives.

(g) Brokers and Finders. Buyer has not employed any broker, finder, consultant or intermediary in connection with the Transactions contemplated by this Agreement who would be entitled to a broker's, finder's or similar fee or commission in connection therewith or upon the consummation thereof.

5.3 Non-Reliance. Buyer agrees and acknowledges that Buyer has relied solely on the representations and warranties set forth in Section 5.1 and except for the representations and warranties expressly set forth in Section 5.1, as modified by the Disclosure Schedule and any certificate delivered by or on behalf of Seller hereunder, neither Seller nor any of its shareholders, trustees, Affiliates or representatives or any other Person, has made or is making any other representations or warranties, promises, covenants, agreements or guaranties, statutory, common law or otherwise, of any nature, oral or written, past, present or future, including any other representations or warranties, express or implied, with respect to, and Buyer have not relied upon, the accuracy or completeness of any other information, provided, or made available by, Seller or any of its representatives, with respect to, or in connection with, the negotiation, execution or delivery of this Agreement or the Transactions contemplated hereby.

ARTICLE 6
COVENANTS

6.1 Obligations of the Parties Prior to Closing. Seller will not prior to the Closing Date (a) incur any material liability outside the ordinary course of business with respect to the Transferred Assets, or (b) create any Encumbrance on any of the Transferred Assets.

6.2 Non-Competition. The Parties hereto agree and acknowledge that the provisions of this Agreement shall not be construed to limit or restrict in any manner the rights of Seller or any of its Affiliates to develop, manufacture, use, sell or commercialize in any manner the Product in a generic or other formulation, either in the Territory or outside of the Territory; provided, however, that for a period of ten (10) years commencing on the Effective Date, Seller shall not manufacture or commercialize any product containing the same active ingredient and in the same dosage and form as that of the Product. Should any part or provision of this Section 6.2 be held invalid, void, or unenforceable in any court of competent jurisdiction, such invalidity, voidness, or unenforceability will not render invalid, void, or unenforceable any other part or provision of this Agreement. The Parties further agree that if any portion of this Section 6.2 is found to be invalid or unenforceable by a court of competent jurisdiction because its duration, territory, or other provisions are deemed to be invalid or unreasonable in scope, the invalid or unreasonable terms will be replaced by terms that are valid and enforceable and that come closest to expressing the intention of such invalid or unenforceable terms, and any court of competent jurisdiction shall enforce this Section 6.2 as so modified to the maximum extent allowed by Law.

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6.3 Standards of Quality. Buyer agrees to comply with applicable Laws in the Territory in the marketing, sale, and distribution of Product.

6.4 Post-Effective Date Agreements. For the period commencing on the Effective Date and ending at the Closing, Seller covenants and agrees with Buyer as follows with respect to the Product NDA:

(a) the Product NDA will be maintained in full force and effect;

(b) no amendment or other modification to the Product NDA will be made without prior written approval of Buyer;

(c) Seller will not authorize any Third Party to sell any products under the Product NDA;

(d) Seller will not authorize any Third Party to make reference to the Product NDA, file any new drug application or other application for marketing authorization that makes reference to the Product NDA, or launch any authorized generic under the Product NDA;

(e) Seller will maintain the confidentiality of any confidential sections of the Product NDA;

(f) Seller will comply with all applicable FDA regulations and applicable Law in connection with any matters related to the Product NDA;

(g) Seller will promptly notify Buyer of any correspondence from FDA or any other Governmental Authority concerning the Product NDA;

(h) Seller will not file any submission or deliver any correspondence concerning the Product NDA to FDA or any other Government Authority without the written consent of Buyer;

(i) Seller will not assign or otherwise modify or transfer title of the Product NDA except as expressly provided for herein or approved in writing by

Buyer;

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(j) Seller will not create, cause to be created, or consent to or allow to be created, any Encumbrance over the Product NDA; and

(k) Seller will not take any other action that would or could reasonably be expected to inhibit or delay transfer of the Product NDA to Buyer pursuant to Section 3.3(b).

Notwithstanding anything contained herein, Seller shall not be held responsible for occurrence of any event with respect to the Product NDA due to the acts or omissions of Buyer.

6.5 Reasonable Efforts of the Parties. Seller and Buyer shall each use its respective Commercially Reasonable Efforts to cause all of the conditions to the obligations of the other to consummate the Transactions contemplated hereby to be met as soon as practicable after the date of this Agreement and to do, or cause to be done, all things necessary to consummate the Transactions contemplated hereby.

6.6 Registrations and Filings. (a) Without prejudice to applicable Laws in the Territory that may exclude this possibility, from and after the Closing, Buyer shall take the lead in coordinating the Product NDA transfers. Buyer shall file, or shall cause its Affiliate or designee to file, or, if required by applicable Laws, Seller, its Affiliate or designee shall file, applications for the transfer of the Product NDA in the Territory. (b) For the avoidance of doubt, Seller does not warrant and shall not be responsible for the successful transfer, maintenance or renewal of the Product NDA after the Closing Date and shall not be obligated to launch the Product in the Territory where it has not been launched before Closing.

6.7 Prescription Drug User Fee Act. Following the Effective Date, Buyer shall assume and have responsibility for fees or charges associated with the Product due and payable to the FDA after the Effective Date pursuant to the Prescription Drug User Fee Act, and any reauthorization thereto. Seller shall retain full responsibility and liability for all fees or charges due and payable to the FDA on or prior to the Effective Date.

6.8 Confidentiality.

(a) Seller undertakes with Buyer, and Buyer undertakes with Seller to keep confidential (except as expressly provided in this Agreement) at all times after the date of this Agreement, and not directly or indirectly reveal, disclose or use for its own or any other purposes, any Confidential Information received or obtained as a result of entering into or performing, or supplied by or on behalf of a Party in the negotiations leading to, this Agreement and which relates to: (i) the negotiations relating to this Agreement; or (ii) the subject matter and/or provisions of this Agreement, subject to Section 6.8(b) below.

(b) The prohibition in Section 6.8(a) does not apply if: (i) the information was in the public domain before it was furnished to the relevant Party or, after it was furnished to that Party, entered the public domain otherwise than as a result of a breach by that Party of this Section 6.8 or any written or confidentiality agreement under which such Party is bound; (ii) disclosure is necessary in order to comply with applicable legislation, regulatory requirements, legal process, or stock exchange rules, provided that any such information disclosable pursuant to this Section 6.8(b) shall be disclosed only to the extent required by Laws and (unless such consultation is prohibited by Laws or is not reasonably practicable) only after consultation with Buyer or Seller (as the case may be) or (iii) Buyer is contemplating the sale, assignment, conveyance or other transfer to a Third Party of all or substantially all of its rights, title and interest in and to the Product, provided that Buyer shall have entered into a confidentiality agreement with such Third Party no less restrictive than this Section 6.8.

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(c) The provisions of the CDA are hereby incorporated herein and shall remain binding and in full force and effect; provided, however, that all obligations of Buyer under the CDA with respect to each of the Transferred Assets shall terminate as of the date of transfer of such Transferred Asset to Buyer pursuant to the terms of this Agreement. Except as otherwise provided herein or in the Ancillary Agreements, Seller shall, and shall cause its Representatives to, treat after the date hereof as strictly confidential all nonpublic, confidential or proprietary information concerning the Transferred Assets, and Seller shall not, after the date hereof, use such information to the detriment of the Buyer.

(d) The Parties further agree that release of any Confidential Information, whether directly or indirectly, would cause irreparable injury to the non-disclosing Party and that the Party whose Confidential Information has been or is being disclosed in violation of this Section 6.8 will, in addition to any other rights and remedies the non-disclosing Party may have at law or in equity, will be entitled to seek an injunction enjoining and restraining the non-disclosing Party from violating or threatening to breach this Section 6.8.

6.9 Commercial Payer and Government Utilization Rebates. After the Closing Date, Seller will notify all commercial payers and Governmental Authorities listed on Exhibit D (collectively, the "Payers") about the Transactions contemplated by this Agreement and instruct the Payers to send all invoices and chargebacks to Buyer after the Closing Date. Seller will assist with Buyer and facilitate the administration of those Product rebate invoices and chargebacks received by Seller, if any, within three (3) months after the Closing Date. Seller shall notify all Payers to remove Product from each respective agreement, effective as of the Closing Date..

6.10 Further Assurances. Seller and Buyer, agree that subsequent to the Closing Date, at the request of the other Party, they will execute and deliver, or cause to be delivered, to the other Party, such further instruments and take such other action as may be reasonably necessary to carry out the Transactions contemplated by this Agreement.

6.11 Costs and Expenses. Except as otherwise expressly provided herein, the Parties shall bear their own respective expenses (including, but not limited to, all compensation and expenses of counsel, financial advisors, consultants and independent accountants) incurred in connection with the preparation and execution of this Agreement and consummation of the Transactions contemplated hereby, including assistance reasonably requested in consummating such Transactions.

ARTICLE 7
INDEMNIFICATION AND INSURANCE

7.1 Indemnification by Seller. From and after the Closing Date, Seller shall defend, indemnify and hold harmless Buyer, its Affiliates, officers, directors, employees, and agents, against and in respect of any and all Losses, resulting or arising from or otherwise relating to:

(a) any breach by Seller of any covenant, representation or warranty of Seller contained in this Agreement or any Ancillary Agreements; and

(b) any Excluded Liabilities.

7.2 Indemnification by Buyer. From and after the Closing Date, Buyer shall indemnify and hold harmless Seller, its Affiliates, officers, directors, employees, and agents, against and in respect of any and all Losses resulting or arising from or otherwise relating to:

(a) any breach by Buyer of any covenant, representation or warranty contained in this Agreement or any Ancillary Agreements;

(b) Any Assumed Liabilities;

(c) use of the Marketing Collateral by Buyer after the Closing Date; and

(d) any negligent or intentional act committed by Buyer or its employees or agents that caused injury to a person or damage to property, or failed to comply with any applicable law, statute, regulation or ordinance.

7.3 Method of Asserting Claims.

(a) All claims for indemnification ("Indemnity Claims") by any indemnified Party or a Party with respect to any other claim under or with respect to this Agreement or any Ancillary Agreements (the " Indemnified Party") hereunder shall be asserted and resolved as set forth in this Section 7.3. In the event that any written claim or demand for which a Party (the "Indemnifying Party") would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a Third Party, such Indemnified Party shall promptly, but in no event more than ten (10) days following such Indemnified Party's receipt of such claim or demand, notify the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (the "Claim Notice"). All indemnity claims by any Indemnified Party that do not involve Third Party claims shall be communicated via a Claim Notice to the other Party promptly following discovery of such claim.

(b) The Indemnifying Party shall have fifteen (15) days from the delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not it desires to defend the Indemnified Party against such claim or demand. An election to assume the defense of such claim or demand shall not be deemed to be an admission that the Indemnifying Party is liable to the Indemnified Party in respect of such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party; provided, however, that the amount of such expenses shall be a liability of the Indemnifying Party hereunder, subject to the limitations set forth in this Article 8. In the event, however, that the Indemnifying Party declines or fails to assume the defense of the claim within such fifteen (15)-day period, the Indemnified Party may assume the defense thereof and the reasonable fees and disbursements of counsel for the Indemnified Party shall be deemed Losses hereunder, subject to the limitations set forth in this Article 8.

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(c) In the event that it is ultimately determined that the Indemnifying Party is not obligated to indemnify, defend or hold the Indemnified Party harmless from and against any Third Party claim, the Indemnified Party shall reimburse the Indemnifying Party for any and all costs and expenses (including without limitation, attorney's fees and court costs) actually incurred by the Indemnifying Party in its defense of the Third Party claim. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings. If any Indemnified Party desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense.

(d) The Indemnified Party shall not settle a claim or demand without the prior written consent of the Indemnifying Party, which shall not be unreasonably withheld, conditioned or delayed. The Indemnifying Party may settle any claim or demand for monetary damages; it being understood that the Indemnifying Party shall not, without the prior written consent of the Indemnified Party (which shall not be unreasonably withheld, conditioned or delayed) settle, compromise or offer to settle or compromise any such claim or demand on a basis which would result in the imposition of a consent order, injunction or decree that would substantially restrict the future activity or conduct of the Indemnified Party or any subsidiary or Affiliate thereof.

(e) To the extent the Indemnifying Party shall control or participate in the defense or settlement of any Third Party claim or demand, the Indemnified Party will give the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party.

(f) The controlling party, in either case, shall select counsel, contractors, experts and consultants of recognized standing and competence, shall take reasonable steps necessary in the investigation, defense or settlement thereof, and shall diligently and promptly pursue the resolution thereof.

(g) Any notice of a claim by reason of any of the warranties or covenants contained in this Agreement shall state specifically the warranty or covenant with respect to which the claim is made, the facts giving rise to an alleged basis for the claim, and the amount of the liability asserted against the Indemnifying Party by reason of the claim.

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7.4 Survival. The covenants and agreements of the Parties shall survive without limitation as to time, and the period during which a claim for indemnification may be asserted in connection therewith shall continue for the applicable statute of limitations.

7.5 DAMAGES LIMITATION. NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT OR ANY ANCILLARY AGREEMENT, NO PARTY, DIRECTOR, OFFICER, EMPLOYEE, AFFILIATE OR ADVISOR OF ANY OF THE FOREGOING, SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PERSON, EITHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES OR ANY DAMAGES ASSOCIATED WITH ANY LOST PROFITS OR LOST OPPORTUNITIES OF SUCH OTHER PERSON (INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION) RELATING TO THE BREACH OR ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO THE OTHER PARTY IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SUCH OTHER PARTY.

7.6 Limitation of Liability of Seller. Notwithstanding the foregoing, except for Losses directly or indirectly related to, incurred in connection with or as a result of fraud, intentional misconduct or willful breach, the maximum amount of indemnifiable Losses which may be recovered cumulatively from Seller arising out of or resulting from the indemnity obligations set forth in Section 7.1(a) shall be an amount equal to [***].

7.7 Cooperation. The Parties shall cooperate with each other with respect to resolving any claim or liability with respect to which one Party is obligated to indemnify another Party hereunder, including by making Commercially Reasonably Efforts to mitigate or resolve any such claim or liability.

7.8 Manufacturing. Seller shall reasonably cooperate with Buyer with respect to transitioning manufacturing services to Buyer. In case of a third party manufacturer, the Seller will reasonable support such third party manufacturer with respect to the transitioning manufacturing services. Seller shall not manufacture or have manufactured the Product following the date hereof, including any orders of Product placed prior to the date hereof.

ARTICLE 8
TERMINATION

8.1 Right to Terminate for Breach. Prior to the Closing, either Party may terminate this Agreement immediately by written notice to the other Party if the other Party materially breaches any terms and conditions and covenants under this Agreement, including default of payment obligations, or a failure to execute the Trademark Transfer Agreement (in consistent with the form under Exhibit B) and the Domain Name Transfer Agreement (in consistent with the form under Exhibit C) on the Effective Date, which breach remains uncured for thirty (30) Business Days measured from the date written notice of such breach is given to the breaching Party, which notice shall specify the nature of the breach and demand its cure.

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8.2 Post Termination. In the event of termination of this Agreement under Section 8.1, (i) the Transferred Assets (including without limitation, any Confidential Information) shall be returned to the Seller without any demur, delay or protest; and (ii) subject to Section 8.2 (i) and those obligations that shall survive the termination (such as confidentiality obligations), Buyer shall be relieved of any further obligations to Seller pursuant to this Agreement and shall have the right to seek appropriate remedies as may be available to the Buyer under law or equity. Buyer shall perform all required measures at having the return to the Seller the Intellectual Property. In the event that the Buyer fails to return the Transferred Assets to the Seller, the Seller shall have the right to seek appropriate remedies as may be available with the Seller under law or equity.

8.3 Buyer Breach after Closing. In the event that the Buyer materially breaches post-Closing covenants under this Agreement, which breach remains uncured for thirty (30) Business Days measured from the date written notice of such breach is given to the breaching Party, which notice shall specify the nature of the breach and demand its cure, including, without limitation, the Additional Payments under Section 4.1(c), the Buyer shall return the Product NDA (including without limitation, approval of all necessary filing of all relevant documents with the Government Authority in the Territory in order to transfer the Product NDA to the Seller) to the Seller without consideration or refund of any payment that was received by the Seller prior to the return.

ARTICLE 9
MISCELLANEOUS

9.1 Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given (a) upon delivery by personal delivery, (b) upon delivery by a nationally-recognized overnight courier service, or (c) three days after mailing, if mailed, certified or registered mail (return receipt requested), postage prepaid, each to the other Party at the following address (or at such other address as shall be given in writing by any Party to the other in accordance with these provisions):

If to Buyer, to:

Journey Medical Corporation
9237 Via De Ventura Suite 105
Scottsdale, AZ 85258
[***] (President and CEO)
[***]

With a copy to:

Journey Medical Corporation
9237 Via De Ventura Suite 105
Scottsdale, AZ 85258
[***] (General Counsel)
[***]

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If to Seller to:

Sun Pharmaceutical Industries, Inc.
[***]

With a copy to:

Sun Pharmaceutical Industries, Inc.
[***]

or to such other Person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been given (a) on the date on which so hand delivered and (b) on the third Business Day following the date on which so mailed, except for a notice of change of address, which shall be effective only upon receipt thereof.

9.2 Conflict; Construction of Documents. In the event of any conflict between the provisions of this Agreement and the provisions of any Ancillary Agreements, the provisions of this Agreement shall prevail.

9.3 Assignability; Successors and Assigns. Neither this Agreement nor any of the rights or obligations of the Parties hereunder may be assigned by any Party without the prior written consent of the other Party, provided that a Party may assign its rights and obligations under this Agreement, without the prior written consent of the other party, to an Affiliate or to a successor of the assigning party by reason of merger, sale of all or substantially all of its assets or any similar transaction. Any attempted assignment or delegation in contravention hereof shall be null and void. Subject to the foregoing, this Agreement and all rights and powers granted and obligations created hereby will bind and inure to the benefit of the Parties hereto and their respective successors and assigns.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to the conflicts of law rules of such state and subject to Section 9.5, the courts in the State of New York shall have exclusive jurisdiction.

9.5 Dispute Resolution. In the event of any dispute arising out of or in connection with this Agreement, the dispute shall be settled by arbitration in accordance with American Arbitration Association and its rules which are deemed to be incorporated by reference to this section, for the time being in force. The arbitral tribunal shall consist of a sole arbitrator appointed in accordance with the said rules. The seat of arbitration shall be New York and the language of the arbitration shall be English. The award rendered by the sole arbitrator shall be final and binding and enforceable in any court of competent jurisdiction.

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9.6 Headings. The headings preceding the text of the Sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. All words used in this Agreement will be construed to be of such gender or number as the context may require.

9.7 Amendment and Waiver. The Parties may by mutual written agreement amend this Agreement in any respect, and any Party, as to such Party, may (a) extend the time for the performance of any of the obligations of any other Party, and (b) waive (i) any inaccuracies in warranties by any other Party, (ii) compliance by any other Party with any of the agreements contained herein and performance of any obligations by such other Party, and (iii) the fulfillment of any condition that is precedent to the performance by such Party of any of its obligations under this Agreement. To be effective, any such amendment or waiver must be in writing and be signed by both Parties.

9.8 Entire Agreement. This Agreement, together with the Ancillary Agreements, shall constitute the entire understanding and agreement between the Parties to it in relation to the subject matter of this Agreement and shall together supersede all previous agreements between the Parties in relation to the same subject matter. It is further agreed that neither Party has entered into this Agreement in reliance upon any warranty or undertaking of the other Party which is not expressly set out or referred to in this Agreement.

9.9 Incorporation of Schedules. All Exhibits and Schedules attached hereto and referred to herein are hereby incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein.

9.10 Press Release. Neither Party shall issue any press release, trade announcement or make any other public announcement with regard to the Transactions contemplated by this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld. This restriction shall not apply to announcements required by any Government Authority. However, in such event the Parties shall, to the extent reasonably practicable, coordinate the wording of any such announcements. To the extent any Party is required to file a copy of this Agreement or any Ancillary Agreement as an exhibit to any filings with, or otherwise publicly disclose the terms hereof or thereof to, the Governmental Authority, the Parties will coordinate in advance on the form of redacted version of this Agreement or applicable Ancillary Agreement or the terms to be so filed or disclosed and permit the other Party to provide comments and take such comments into account in good faith prior to making such filing.

9.11 No Third Party Beneficiary Rights. This Agreement is not intended to and shall not be construed to give any Person or entity other than the Parties signatory hereto any interest or rights (including, without limitation, any Third Party beneficiary rights) with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

9.12 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such other acts, as may be reasonably necessary or appropriate in order to carry out the purposes and intent of this Agreement.

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9.13 Severability. Each of the agreements, undertakings, covenants, warranties, indemnities and other obligations of the Parties entered pursuant to this Agreement are considered reasonable by the Parties hereto. If any provision of this Agreement, an Ancillary Agreement, or any part thereof is held void or unenforceable or in conflict with the laws of any relevant jurisdiction, the Parties hereto shall negotiate in good faith to modify this Agreement or Ancillary Agreement, as applicable, so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transactions contemplated hereby be consummated as originally contemplated to the

greatest extent possible.

9.14 Relationship. The relationship between the parties is that of independent contractor. Nothing in this Agreement shall be construed as creating a relationship of a joint venture, partners, employer-employee, or agent. Neither party has the authority to create any obligations for the other, or to bind the other to any representation or document.

9.15 Counterparts. This Agreement may be executed in two counterparts, each of which shall for all purposes be deemed to be an original and both of which shall, when taken together, constitute one instrument. Delivery of an executed counterpart of this Agreement by facsimile, email in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document has the same effect as delivery of an executed original of this Agreement.

(Signatures appear on the following page)

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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement of the Effective Date.

JOURNEY MEDICAL CORPORATION

By: /s/ Claude Maraoui
Name: Claude Maraoui
Title: President and CEO

SUN PHARMACEUTICAL INDUSTRIES, INC.

By: /s/ Ablay Gaudhi
Name: Ablay Gaudhi
Title: CEO- North America

Exhibit 10.13

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ASSIGNMENT, LICENSE, AND COLLABORATION AGREEMENT

by and among

DR. REDDY'S LABORATORIES LTD.

and

JOURNEY MEDICAL CORPORATION

entered into as of

June 29, 2021

Table of Contents

Exhibits

ASSIGNMENT, LICENSE, AND COLLABORATION AGREEMENT

This **ASSIGNMENT, LICENSE, AND COLLABORATION AGREEMENT** (this "**Agreement**") is entered into as of June 29, 2021 (the "**Effective Date**") by and between **DR. REDDY'S LABORATORIES, LTD**, a company organized under the laws of India having a registered office at [***] ("**DRL**") and **JOURNEY MEDICAL CORPORATION**, a corporation organized under the laws of Delaware, having a place of business at 9237 East Via De Ventura Blvd., Suite 105, Scottsdale, AZ 85258, USA ("**Journey**"). DRL and Journey are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, DRL Controls (as defined below) the Product IP (as defined below), and has the right to Exploit (as defined below) the Product (as defined below) in all countries and/or other jurisdictions worldwide;

WHEREAS, DRL desires to transfer, convey, sell, and assign, and Journey desires to accept, all right, title, and interest in and to all the Assigned Assets (as defined below) subject to the terms and conditions herein;

WHEREAS, DRL will, subject to the terms and conditions herein, continue to own the Assigned Assets up to the Transfer Date (as defined below), whereupon the Assigned Assets will be transferred to Journey on the Transfer Date;

WHEREAS, to enable Journey to Exploit the Product prior to and after the transfer, conveyance, sale, and assignment of the Assigned Assets, Journey desires to obtain from DRL, and DRL desires to grant to Journey certain licenses to Exploit the Product in the Field (as defined below) in the Territory (as defined below) pursuant to the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties hereby agree as follows:

ARTICLE 1
DEFINITIONS

"**Acceptance**" means, with respect to an NDA (as defined below), receipt of written notice from the FDA indicating that such NDA has been accepted for filing and further FDA review.

"**Accounting Standards**" means (a) with respect to Journey, U.S. Generally Accepted Accounting Principles, and (b) with respect to DRL, IFRS, in each case, as then current at the relevant time and as consistently applied by the applicable Party.

"**Acquiror**" means a Third Party successor to the business of Journey pursuant to an Acquisition Event.

"**Acquisition Event**" means (a) the sale of all or substantially all the assets of Journey to which this Agreement relates to a Third Party, (b) the sale of all or substantially all the assets of Journey to a Third Party, (c) a merger (including a reverse triangular merger), consolidation, share exchange, or other similar transaction involving Journey and any Third Party which results in the holders of the outstanding voting securities of Journey, or any Affiliate that controls such party directly or indirectly, immediately before such merger, consolidation, share exchange, or other similar transaction, ceasing to hold more than fifty percent (50%) of the combined voting power of the surviving or continuing entity immediately after such merger, consolidation, share exchange, or other similar transaction, (d) the acquisition by a Third Party, or a group of Third Parties acting in concert, of more than fifty percent (50%) of the outstanding voting equity securities of Journey. For the purpose of this definition of Acquisition Event, (i) the term "group" includes any group acting for the purpose of acquiring, holding, or disposing of securities within the meaning of the relevant laws of the country or jurisdiction of the relevant party (e.g., with respect to the U.S., Section 13(d) and 14(d) of the United States Securities Exchange Act of 1934 and Rule 13d-5(b)(1) under the said Act) and (ii) the foregoing clauses do not include any sale or transfer solely to an Affiliate of the applicable party, or (e) any transfer of the license granted by DRL to Journey pursuant to Section 2.1(a) to a Third Party. For the avoidance of doubt, an Uplisting shall not be considered an Acquisition Event.

"**Acquisition Product Value**" means (a) with respect to clause (a) of "Acquisition Event", the consideration actually paid by Acquiror to Journey for such assets, whether structured as a lump-sum payment, earn-out, profit share, or other payment structure, and (b) with respect to all other Acquisition Events, the consideration allocated to the assets related to this Agreement that are actually paid by Acquiror to Journey, whether structured as a lump-sum payment, earn-out, profit share, or other payment structure, (i) as agreed to by the Parties in writing, or (ii) as determined by an independent certified appraiser that has experience in the valuation of assets similar to the assets of Journey included in such Acquisition Event.

"**Additional Costs**" has the meaning set forth in Section 4.2(a).

"**Affiliate**" means, with respect to either Party, any Person that directly or indirectly through one (1) or more intermediaries controls, is controlled by or is under common control with such Party, for so long as such control exists; for purposes of this definition, "control" (including, with correlative meaning, the terms "controlled by" or "under common control with") means (a) the possession, directly or indirectly, of the power to direct the management or policies of a Person, whether through the ownership of voting securities, by contract relating to voting rights or corporate governance, or otherwise; or (b) the ownership, directly or indirectly, of at least fifty percent (50%) or more of the voting securities or other ownership interest of a Person (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity). The Parties acknowledge that in the case of certain entities organized under the laws of certain countries and/or other jurisdictions outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than fifty percent (50%), and that in such case such lower percentage shall be substituted in the preceding sentence, provided that such foreign investor has the power to direct the management or policies of such entity.

"**Agreement**" has the meaning set forth in the introductory paragraph.

"**Alliance Manager**" has the meaning set forth in Section 3.5(a).

"**Annual FTE Costs**" means the aggregate FTE Costs in any Development Period Year.

"**Anti-Corruption Law Violation**" means a violation of an Anti-Corruption Law in the Territory relating to the Product.

"**Anti-Corruption Laws**" means the U.S. Foreign Corrupt Practices Act, as amended, the UK Bribery Act 2010, as amended, and any other applicable anti-corruption laws, and laws for the prevention of fraud, racketeering, money laundering, or terrorism.

"**AOP**" has the meaning set forth in Section 14.12.

"**Applicable Laws**" means all applicable laws, statutes, rules, regulations, ordinances, and other pronouncements having the effect of law of any federal, national, multinational, state, provincial, county, city, or other political subdivision, domestic or foreign, anywhere in the world.

"**Assigned Assets**" has the meaning set forth in Section 5.2.

"**Assignment Agreements**" mean that certain (a) Bill of Sale and Assignment and Assumption Agreement, and (b) Patent Assignment Agreement, in each case (a) and (b), entered into by the Parties as of the Effective Date, but which will become automatically effective as of 11:59 PM Eastern Time on the Transfer Date, and each of which are attached hereto as **Exhibits A1 and A2**, respectively.

"**Assumed Liabilities**" has the meaning set forth in Section 5.3.

"**Bankruptcy Code**" means, as applicable, the U.S. Bankruptcy Code (in the United States of America), as amended from time to time, and the rules and regulations and guidelines promulgated thereunder, or any applicable bankruptcy laws of any other country, other jurisdiction or competent Governmental Authority, as amended from time to time, and the rules and regulations and guidelines promulgated thereunder.

"**Breaching Party**" has the meaning set forth in Section 12.3(a).

"**Business Day**" means any day other than (a) Saturday or Sunday, or (b) any day on which the commercial banks in New York City, United States and/or Mumbai, India are authorized or required to be closed under Applicable Law.

"**Calendar Quarter**" means each successive period of three (3) calendar months commencing on January 1, April 1, July 1, and October 1, except that the first Calendar Quarter of the Term commences on the Effective Date and ends on the day immediately before the first to occur of January 1, April 1, July 1 or October 1 after the Effective Date, and the last Calendar Quarter ends on the last day of the Term.

"**Calendar Year**" means each successive period of twelve (12) calendar months commencing on January 1 and ending on December 31, except that the first Calendar Year of the Term commences on the Effective Date and ends on December 31 of the year in which the Effective Date occurs, and the last Calendar Year of the Term commences on January 1 of the year in which the Term ends and ends on the last day of the Term.

"**Claims**" has the meaning set forth in Section 10.2.

"**Clinical Study**" means any study conducted in humans (healthy volunteers or patients) according to a set protocol and meeting the requirements of GCP.

"**Commercialization**," "**Commercialize**" or "**Commercializing**", mean, with respect to a given product, all activities undertaken before or after obtaining Regulatory Approvals relating to the launch, promotion, detailing, branding, marketing, advertising, pricing, reimbursement, offering for sale, sale, and/or distribution of such product, including product support, life cycle management, patient support, customer support, the booking of sales, sampling, shipping, handling, warehousing, logistics management, and invoicing activities. "Commercialization" excludes any Development or Manufacture of such product.

"**Commercially Reasonable Efforts**" means, with respect to a Party and an obligation under this Agreement, such efforts that are consistent with the efforts and resources normally used by a comparable pharmaceutical company in the performance of such an obligation for a similar pharmaceutical product (including the Development, Manufacture, and/or Commercialization of a similar pharmaceutical product, as applicable, at a similar stage in its Development and/or Commercialization as the Product, and that has commercial and market potential similar to the Product) including the exercise of its prudent scientific and business judgment, taking into account any material issues related thereto, including, as applicable, any issues of intellectual property coverage, safety and/or efficacy, legal and/or compliance, stage of development, product profile, competitiveness of the marketplace, proprietary position, regulatory exclusivity (anticipated or approved), labeling, present and future market and commercial potential, the likelihood of receipt of regulatory approval, profitability (including pricing and reimbursement status achieved or likely to be achieved), the existence and developmental stages of alternative products and programs, cost of investment in pre-launch activities for the Product, and legal issues. "**Commercially Reasonable**" as applied to a Party fulfilling such Party's obligation under this Agreement will be similarly construed.

"**Competing Product**" has the meaning set forth in Section 9.6(a).

"**Confidential Information**" of a Party means any and all Information of such Party or its Affiliates that is disclosed by or on behalf of such Party (or its Affiliates or representatives) to the other Party (or its Affiliates or representatives) under this Agreement, whether in oral, written, graphic, and/or electronic form, and whether prior to, on, and/or after the Effective Date, including the terms of this Agreement, any Information related to the Product developed by or on behalf of the disclosing Party or its Affiliates, and/or the scientific, regulatory or business affairs or other activities of either Party related to the Product. Without limiting the foregoing, the Development Plan, all Product Know-How, Journey Know-How, all Regulatory Materials, and all Revenue Percentage Reports shall be Journey's Confidential Information and the DRL Background Know-How shall be DRL's Confidential Information. The terms of this Agreement and shall be the Confidential Information of each Party.

"**Control**" or "**Controlled**" means, with respect to any material, Information, Patent or other intellectual property right, that a Party (a) owns or (b) has a license or other right to such material, Information, or intellectual property right, and, in each case ((a) and (b)), has the ability to grant a Person access, a license, or a sublicense (as applicable) to the foregoing without violating the terms of any then-existing agreement or other arrangement with any Third Party.

"**Cover**" means, as used in relation to a Patent and a product or other invention, and in connection with a duty, obligation, or performance of a Party, that such Patent would be infringed by the manufacture, use, offer for sale, sale, or import of, or other Exploitation of, such product or invention by such Party, but for this Agreement.

"**Default Notice**" has the meaning set forth in Section 12.3(a).

"**Develop**" or "**Development**" means, with respect to a given product, all activities that are necessary or useful to obtain, support or maintain Regulatory Approval (other than to obtain any pricing or reimbursement approvals) of such product in any particular country or other jurisdiction in the Territory, including any such activities relating to preparing and conducting non-clinical studies and Clinical Studies and regulatory activities (*e.g.*, preparing, filing and obtaining regulatory applications), and formulation development, process development, process qualification and validation, scale up, pre-clinical, non-clinical, clinical and/or commercial manufacture (including manufacture of pre-clinical, non-clinical or Clinical Study material). "Develop" or "Development" excludes the Commercialization and the Manufacture of such product.

"**Development Contract**" has the meaning set forth in Section 4.2(e).

"**Development Costs**" means the Journey Development Costs and the DRL Development Costs.

"**Development Costs Estimate**" has the meaning set forth in Section 4.2(a). "**Development Costs Limit**" has the meaning set forth in Section 4.2(c)(i).

"**Development Period**" means the period after Effective Date and before the Transfer Date in which DRL is Developing the Product under the Development Plan. For the avoidance of doubt, the Development Period may be longer or shorter than the three (3) Development Period Years provided for on Exhibit E.

"**Development Period Year**" means the twelve (12) month period beginning on the Effective Date and each twelve (12) month period thereafter during the Development Period. Unless the Development Period ends before the Transfer Date, the first (1st) Development Period Year will begin on the Effective Date and end on the day immediately prior to the first (1st) anniversary of the Effective Date and the second (2nd) Development Period Year will begin on the first (1st) anniversary of the Effective Date and end on the day immediately prior to the second (2nd) anniversary of the Effective Date. For the avoidance of doubt, the final Development Period Year may be shorter than twelve (12) months.

"**Development Plan**" means the written plan to be adopted by the JDC at the first JDC meeting, setting forth the activities to be performed by or on behalf of DRL to support the submission of the application seeking Product Regulatory Approval, which shall be finalized and approved by the JDC at the initial meeting of the JDC and include (a) the scope of activities to be performed by or on behalf of DRL, including a sub-microbial analysis, and (b) the budget estimate for such activities.

"**Dispute**" has the meaning set forth in Section 13.1.

"**Dollars**" or "**$**" means U.S. dollars.

"**Draft Development Plan**" means the initial draft of the Development Plan attached hereto as **Exhibit B**.

"**DRL**" has the meaning set forth in the introductory paragraph.

"**DRL Background IP**" means the DRL Background Know-How and the DRL Background Patents.

"**DRL Background Know-How**" means all Information (whether or not such Information is Confidential Information, patentable or not patentable) and any rights therein or related thereto that is Controlled by DRL before or on the Effective Date or at any time during the Term, in each case, that is (a) generally not known, and (b) reasonably necessary or used by DRL to Exploit the Products but excluding any Product Know-How. As used in this definition, Information that is "reasonably necessary" includes Information that is Controlled by DRL and related to the Product that is necessary for Journey to avoid incurring substantial additional cost in Exploiting the Product

(as such Product exists as of the Transfer Date) or that results in a substantial reduction to the value of the Assigned Assets (as such Assigned Assets exist as of the Transfer Date).

"**DRL Background Patents**" means any Patent Controlled by DRL in the Territory, issued or filed any time during the Term, that Covers a Product that Journey is Exploiting in the Territory, and that the Parties agree to add to the scope of the licenses granted to Journey under this Agreement in accordance with the provisions of Section 8.5.

"**DRL Development Costs**" means any costs and expenses that are incurred by or on behalf of DRL or any of its Affiliates in accordance with Accounting Standards, this Agreement, and the Development Plan, that are reasonably documented and allocable to the performance of activities under the Development Plan during the Development Period or any Wind Down Period, including all (a) costs and expenses related to non-clinical studies and Clinical Studies conducted under and in accordance with the Development Plan, process development, or otherwise pre-approved in writing by the JDC or Journey (to the extent not paid by Journey in accordance with Section 4.2(e)), (b) costs and expenses related to Manufacture of the clinical supply of the Product required under the Development Plan, (c) the FTE Costs, (d) Regulatory Costs incurred in accordance with the Development Plan or pre-approved by the JDC or Journey (to the extent not paid by Journey in accordance with Section 4.2(e)), (e) costs and expenses incurred by or on behalf of DRL under ARTICLE 8 for which Journey is responsible, and (f) other out-of-pocket costs (including travel costs and any consulting costs) under the Development Plan, including during any Wind Down Period.

"**DRL Indemnitees**" has the meaning set forth in Section 10.3.

"**DRL Territory**" means Armenia, Azerbaijan, Belarus, Brazil, Georgia, India, Kazakhstan, Kyrgyzstan, Moldova, People's Republic of China, Russia, Taiwan, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

"**DRL Territory Trademarks**" means any Trademark to be used by or on behalf of DRL or its Affiliates in the DRL Territory in connection with the Exploitation of the Product, any bioequivalent product, or any other product Covered by one or more Product Patents in the Territory and/or DRL Territory.

"**Effective Date**" has the meaning set forth in the introductory paragraph.

"**Encumbrance**" means any lien, security interest, pledge, mortgage, easement, hypothecation, reservation, conditional sale, prior assignment, or other encumbrance, claim, burden, and/or charge of any nature.

"**European Union**" means, at any particular time, all countries that are then officially recognized as member states of the European Union or members of the European Economic Area. For clarity, any event that first occurs in a county of the European Union that later ceases to be a member of the European Union will still be treated as an event that occurred in the European Union.

"**European Union Approval Period**" means seventy-two (72) months from the receipt of Product Regulatory Approval plus any period of delay that (a) is reasonably attributable to a Regulatory Authority imposed delay on Regulatory Approval or on Journey's Development of the Product in the European Union and/or (b) required to conduct any additional Clinical Studies in the European Union beyond the Clinical Studies described in the Development Plan in order to obtain Regulatory Approval in the European Union, in each or both cases ((a) and/or (b)) during which Journey is exercising Commercially Reasonable Efforts to obtain Regulatory Approval of the Product in the European Union.

"**Executive Officers**" has the meaning set forth in Section 12.3(b).

"**Exploit**" or "**Exploitation**" means to make, have made, import, use, sell, or offer for sale, including to research, Develop, Commercialize, register, modify, enhance, improve, Manufacture, have Manufactured, hold or keep (whether for disposal or otherwise), formulate, optimize, have used, export, transport, distribute, promote, market, have sold, and/or otherwise dispose of, and/or otherwise exploit.

"**FD&C Act**" means the U.S. Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, as amended from time to time, together with any rules, regulations and requirements promulgated thereunder (including all additions, supplements, extensions, and modifications thereto).

"**FDA**" means the U.S. Food and Drug Administration or any successor entity.

"**Field**" means all human and non-human diagnostic, prophylactic, and therapeutic uses.

"**Financial Statements**" has the meaning set forth in Section 4.2(h).

"**First Commercial Sale**" means, with respect to a Product and a country in the Territory, the first sale of such Product by Journey or its Affiliate or Sublicensee for monetary value to a Third Party in such country after Regulatory Approval for such Product has been obtained in such country. For clarity, sales prior to receipt of Regulatory Approval for a Product, if any, such as so-called "treatment IND sales," "named patient sales," and "compassionate use sales," shall not be construed as a First Commercial Sale with respect to such Product.

"**First Installment**" has the meaning set forth in Section 7.1.

"**FTE**" means an employee or contractor of DRL or its Affiliates identified in the Development Plan (by name or role) in connection with activities specified in the Development Plan.

"**FTE Cost**" means, with respect to each applicable FTE and Development Period Year during the Development Period and any Wind Down Period, the FTE Rate multiplied by the FTE Ratio. The "FTE Costs" means the sum of all applicable FTE Costs under the Development Plan.

"**FTE Cost Limit**" has the meaning set forth in Section 4.2(c).

"**FTE Rate**" means the rates set forth on Exhibit C attached hereto, increased annually by [***] percent ([***]%) for FTEs working in India and [***] percent ([***]%) otherwise effective on each anniversary of the Effective Date during the Development Period and any Wind Down Period.

"**FTE Ratio**" means, for each FTE and Development Period Year up to the Transfer Date, the lesser of either one hundred percent (100%) or the ratio obtained by

dividing the time the FTE dedicated to activities under the Development divided by two thousand (2000) hours.

"**Fundamental Representations and Warranties**" has the meaning set forth in Section 9.2.

"**Generic Product**" means, with respect to the Product, any product that is approved in reliance, in whole or in part, on the prior approval (or on safety or efficacy data submitted in support of the prior approval) of such Product as determined by the applicable Regulatory Authority, including any product authorized for sale (i) in the U.S. pursuant to Section 505(j) of the FD&C Act (21 U.S.C. 355(j) or any similar or successor provision of U.S. law), (ii) in the European Union pursuant to a provision of Articles 10, 10a, or 10b of Parliament and Council Directive 2001/83/EC as amended (including an application under Article 6.1 of Parliament and Council Regulation (EC) No 726/2004 that relies for its content on any such provision), or (iii) in any other country or other jurisdiction pursuant to all equivalents of such provisions, including any amendments and successor statutes with respect to the subsections (i) through (iii) thereto. A product licensed or produced by Journey or any of its Affiliates or Sublicensees, under a Regulatory Approval for the Product (e.g., an authorized generic product) will not constitute a Generic Product.

"**Good Clinical Practices**" or "**GCP**" means Good Clinical Practice as promulgated by the FDA under and in accordance with the FD&C Act (Title 21 of the U.S. Code, Section 301 et seq.), Title 21, Parts 312 of the U.S. Code of Federal Regulations, and the guidelines and standards published by the FDA that relate thereto as may be amended from time-to-time, or any successors thereto. To the extent consistent with U.S. law, "GCP" also includes the practices and standards described in the Guidelines on Principles of Good Clinical Practice in Conduct of EU Clinical Trials as promulgated by the European Commission under European Directive 2001/20/EC and/or the ICH Harmonised Tripartite Guideline for Good Clinical Practice (ICH E6), and any analogous practices, standards guidelines, and/or regulations promulgated by any applicable Regulatory Authority in any country or other jurisdiction in the Territory, as each may be amended from time-to-time, or any successors thereto.

"**Good Laboratory Practices**" or "**GLP**" means Good Laboratory Practices as promulgated by the FDA under and in accordance with the FD&C Act (Title 21 of the U.S. Code, Section 342 *et seq*), Title 21, Part 58 of the U.S. Code of Federal Regulations, and the guidelines and standards published by the FDA that relate thereto as may be amended from time-to-time, or any successors thereto. To the extent consistent with U.S. law, "GLP" also includes the principles of good laboratory practice as set out in Directives 2004/9/EC and/or 2004/10/EC (as supplemented by the OECD Principles of Good Laboratory Practices), all applicable national implementing legislation and guidelines, and/or all applicable equivalent regulatory requirements of a Regulatory Authority in any country or other jurisdiction in the Territory, as each may be amended from time-to-time, or any successors thereto.

"**Good Manufacturing Practices**" or "**GMP**" or "**cGMP**" means the applicable regulatory standards and requirements for current good manufacturing practices promulgated by the FDA under and in accordance with the FD&C Act (Title 21 of the U.S. Code, Section 301 *et seq.*), Title 21, Parts 210 and 211 of the U.S. Code of Federal Regulations, and the guidelines and standards published by the FDA relating thereto, as may be amended from time-to-time, or any successors thereto. To the extent consistent with U.S. law, "cGMP" also includes the practices and standards described in the Guide to Good Manufacturing Practices for Medicinal Products as promulgated by the European Commission under European Directive 2003/94/EC, similar standards, guidelines, and/or applicable equivalent regulatory requirements of a Regulatory Authority in any country or other jurisdiction in the Territory, as each may be amended from time-to-time, or any successors thereto.

"**Government Official**" means any Person employed by or acting on behalf of a Governmental Authority, government-controlled entity, or public international organization, including any employee of a government-owned and/or government-controlled corporation or agency and any arbitrator.

"**Governmental Authority**" means any multi-national, federal, state, local, municipal, provincial, regional, or other governmental authority of any nature (including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court, or other tribunal).

"**Healthcare Laws**" means all federal, state, and/or local laws, rules and regulations, including any rules, regulations, guidelines, and/or other requirements of any Governmental Authority, relating to the provision, administration, management or payment for health care or healthcare-related products, services or professionals, including, without limitation, (a) false claims laws (including 31 U.S.C. §§ 3729-3733, commonly referred to as the "Federal False Claims Act"); (b) false representations laws; (c) insurance fraud laws; (d) anti-kickback and all other provisions of the Medicare/Medicaid fraud and abuse laws (42 U.S.C. § 1320a-7 et seq.) and the regulations promulgated thereunder; (e) the physician self-referral provisions of the Stark Law (42 U.S.C. § 1395nn) and the regulations promulgated thereunder; (f) HIPAA; (g) state anti-kickback, physician self-referral, and privacy laws; (h) licensing, certificate of need, and certification requirements and related regulations; (i) corporate practice of medicine laws; (j) fee splitting laws, (k) laws governing the use, handling, control, storage, transportation, and maintenance of controlled substances, pharmaceuticals or drugs; (l) laws governing the operation of a laboratory and the use, handling, control, storage, transportation, and maintenance of laboratory specimens; and (m) any and all other laws administered or otherwise enforced by the U.S. Department of Health and Human Services, Office of Inspector General and/or other governing body.

"**HIPAA**" means, collectively, (a) the Health Insurance Portability and Accountability Act of 1996, (b) the privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, (c) 45 C.F.R. parts 160 and 164, subparts A and E, (d) the security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, (e) 45 C.F.R. parts 160, 162, and 164, subpart C, and (f) the privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act.

"**ICH**" means the International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use.

"**IFRS**" means the International Financial Reporting Standards, the set of accounting standards and interpretations and the framework in force on the Effective Date and adopted by the European Union as issued by the International Accounting Standards Board (IASB) and the International Financial Reporting Interpretations Committee (IFRIC), as such accounting standards may be amended from time to time.

"**IND**" means Investigational New Drug Application Number 144994 submitted by DRL to FDA.

"**Indemnified Party**" has the meaning set forth in Section 10.4.

"**Indemnifying Party**" has the meaning set forth in Section 10.4.

"**Indication**" means a disorder or medical condition for which the Product is approved by a Regulatory Authority to diagnose, treat, prevent, cure, and/or mitigate in the indication section of the Product Labeling for the Product.

"**Information**" means any technical, scientific, and/or other data, in written, electronic, and/or other form, including results, approvals, technology, trade secrets, practices, techniques, methods, processes, inventions, ideas, drawings, study designs, protocols, assays, methods, developments, specifications, formulations, formulae, materials, compositions of matter of any type or kind (whether or not patentable), software, algorithms, marketing reports, expertise, technology, test data (including biological, chemical, pharmacological, toxicological, pharmaceutical, physical, analytical test data and data resulting from nonclinical and Clinical Studies), manufacturing data, quality

control data, and safety data.

"**Infringement**" has the meaning set forth in Section 8.8(a).

"**Intellectual Property**" has the meaning set forth in Section 12.10(a).

"**JDC**" has the meaning set forth in Section 3.1(a).

"**Journey**" has the meaning set forth in the introductory paragraph.

"**Journey Development Costs**" means any costs and expenses that are incurred by or on behalf of Journey or any of its Affiliates in accordance with Accounting Standards, this Agreement, and/or the Development Plan, other than DRL Development Costs.

"**Journey Improvements**" has the meaning set forth in Section 8.3.

"**Journey Indemnitees**" has the meaning set forth in Section 10.1.

"**Journey Know-How**" has the meaning set forth in Section 8.3.

"**Journey Patents**" has the meaning set forth in Section 8.3.

"**Knowledge**" means, the actual knowledge, after due inquiry, of G V S Sesha Kumar, Srinivas Sidgiddi, and D Mallikarjuna Rao.

"**Losses**" has the meaning set forth in Section 10.2.

"**Manufacture**" and "**Manufacturing**" means, with respect to a given product, all activities related to the production, manufacture, formulation, processing, filling, finishing, packaging, labeling, validation, handling and holding of any such product, or any intermediate thereof, including manufacture of Clinical Study material and related quality assurance and quality control testing. "Manufacture" excludes any Development or Commercialization of such product.

"**Milestone Payments**" means the milestone payments described the tables set forth in Sections 7.2, 7.3, 7.4, and 7.5, as applicable.

"**NDA**" means a New Drug Application (as defined in the FD&C Act) or any successor application or procedure filed with the FDA for the Product submitted to and/or approved by FDA.

"**Net Sales**" means, with respect to a product (including an authorized generic version of such product), the aggregate gross amount invoiced by Journey or its Affiliates, Sublicensees, or its Acquiror for the sales or other commercial distribution of Products, including to Third Party wholesalers and Third Party distributors, to each Third Party receiving Products in arm's length transactions, less the following deductions from such total amounts that are actually incurred, allowed, accrued, and/or specifically allocated:

(a) trade, quantity, and/or cash discounts in amounts reasonable or customary in the trade and to extent accrued or actually taken;

(b) credits, refunds, allowances, volumes rebates, charge backs, direct and indirect rebates, distribution fees, reimbursements, or similar payments granted or given to wholesalers and/or other distributors, group purchasing organizations, hospital buying groups, managed care organizations, and/or pharmacy benefit management companies, or similar entities, or that are otherwise incurred in connection with any mandated rebate or discount programs imposed by any Governmental Authority, but only to the extent not previously deducted from gross sales;

(c) sales and/or excise taxes, customs duties, and/or any other governmental charges imposed upon the sale of such Product, to the extent they are included in the gross sales;

(d) allowances or credits given to customers on account of rejection, outdating, recalls, damaged goods, billing corrections, and/or sales returns of the Product;

(e) patient co-pay assistance benefits, rebates, and/or coupon or voucher redemptions specifically provided with respect to the Product;

(f) invoiced freight, postage, shipping, insurance, handling, and other transportation costs, to the extent they are included in the gross sales; rebates paid; and/or other price reductions provided in connection with sale of the Product to any Governmental Authority or regulatory authority in respect of any state or federal Medicare, Medicaid, or similar programs available under or required by Applicable Law; and any other customary adjustments related to products sold and reasonably allocated to the Product as a portion of the total products sold, in accordance with U.S. Generally Accepted Accounting Principles.

(g) The foregoing deductions from the gross amount invoiced shall be deducted only once and only to the extent not otherwise deducted from the gross amount invoiced. Net Sales with respect to sales of the Product and that are not made on an arm's length basis or that are made for consideration other than cash shall be calculated based on the average per-unit Net Sales of the Product and without regard to such non-arm's length or non-cash sales. "Net Sales" cannot be negative. All deductions provided above shall be based on accrual or actual basis without any retroactive adjustments relating to any previous years.

(h) Notwithstanding the foregoing, Net Sales shall not include amounts resulting from the sale or transfer of Product and (i) among Journey, its Affiliates or its or their permitted Sublicensees for subsequent re-sale, and/or (ii) provided at or below cost as samples or for charitable purposes.

"**New York Courts**" has the meaning set forth in Section 13.1.

"**Non-Breaching Party**" has the meaning set forth in Section 12.3(a).

"**Non-Enforcing Party**" has the meaning set forth in Section 8.8(b)(iv).

"**Obligation**" means any debt, liability, and/or obligation of any nature, whether secured, unsecured, recourse, nonrecourse, liquidated, unliquidated, accrued, absolute, fixed, contingent, ascertained, unascertained, known, unknown, and/or otherwise.

"**Other Committees**" has the meaning set forth in Section 3.1(b)(v).

"**Party**" and "**Parties**" has the meaning set forth in the introductory paragraph.

"**Party Representatives**" has the meaning set forth in Section 9.5(d)(iii).

"**Patent Challenge**" means a filing of a claim in a patent office or court of competent jurisdiction by Journey or an Affiliate or Sublicensee thereof, which includes in any way the assertion that any claim of any Product Patent and /or DRL Background Patent is invalid, unpatentable, or unenforceable, other than (i) statements made by or on behalf of Journey, any Affiliate thereof, or any Sublicensee in response to communications from patent offices in connection with the prosecution of patents or patent applications differentiating Journey's, its Affiliates', or any Sublicensees' patents or patent applications from the applicable Product Patents or DRL Background Patent and not contesting the validity, enforceability, or patentability of any claim of a Product Patent or DRL Background Patent; (ii) statements made by Journey, any Affiliate thereof, or any Sublicensee in legal proceedings in defense of Journey's, its Affiliates', or any Sublicensees' patents or patent applications, but only if an opposing party uses Product Patents or DRL Background Patent to challenge the validity, patentability, or enforceability of the defended patents or patent applications of Journey, any Affiliate thereof, or any Sublicensee, and provided that such statements are solely for the purpose of differentiating Journey's, its Affiliates', or Sublicensees' patents or patent applications from the referenced Patents and not contesting the validity, enforceability, or patentability of the Patents; (iii) any defenses, counterclaims, and/or countersuits brought by Journey, an Affiliate of Journey, or a Sublicensee in response to a legal proceeding filed by or on behalf of DRL or any affiliate, licensee, sublicensee, or transferee thereof with respect to any Product Patent and/or DRL Background Patent and a product, method, or service, other than the Product; and (iv) as otherwise approved in writing by DRL, such approval not to be unreasonably delayed, conditioned, and/or withheld.

"**Patents**" means any and all (a) patent applications and issued patents, including, all national, regional, and international patent applications of any type including provisional applications; continuations; divisionals; continuations-in-part; continued prosecution applications; (b) patents that have issued or in the future issue from any patent applications, including utility models, petty patents and design patents and certificates of invention; (c) reissues, renewals, substitutions, additions, reexaminations, corrections, revivals and/or any similar modifications of any such patents; and (d) extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or restorations of patents.

"**PDF**" has the meaning set forth in Section 14.14.

"**Person**" means an individual, a corporation, a partnership, an association, a trust, or other entity or organization, including a Governmental Authority or an agency thereof.

"**Pharmacovigilance Agreement**" has the meaning set forth in Section 6.5(g).

"**Phase 3 Clinical Study**" means a Clinical Study of the Product that the FDA would accept as classified as a phase 3 study (including in accordance with 21 C.F.R. 312.21(c)).

"**Prior CDA**" has the meaning set forth in Section 11.5.

"**Product**" means a pharmaceutical product containing 10-40 mg of minocycline or a minocycline salt in a modified release oral solid dosage form formulation that is Covered by a Valid Claim of a Product Patent, a Journey Patent, and/or a DRL Background Patent.

"**Product IP**" means (a) all intellectual property rights in the Product Know-How in the Territory and (b) the Product Patents.

"**Product Know-How**" means all Information (whether or not such Information is Confidential Information, patentable or not patentable) Controlled by DRL before or on the Effective Date or at any time during the Term, in each case, that is (i) generally not known, (ii) solely and exclusively related to the Product, and (iii) reasonably necessary to Exploit the Product in the Territory. As used in this definition, Information that is "reasonably necessary" includes Information that is Controlled by DRL and solely and exclusively related to the Product that is necessary for Journey to avoid incurring substantial additional cost in Exploiting the Product (as such Product is contemplated in the Draft Development Plan) or that results in a substantial reduction to the value of the Assigned Assets (as such Assigned Assets exists as of the Transfer Date).

"**Product Labeling**" means, with respect to the Product: (a) the Regulatory Authority-approved full prescribing information for such Product for a country or other jurisdiction, including any required patient information; and (b) all labels and other written, printed, or graphic matter upon a container, wrapper, and/or any package insert utilized with or for such Product in such country or other jurisdiction.

"**Product Patents**" means (a) the Patents set forth on **Exhibit D** hereto; (b) any continuations, divisionals, or other patent applications that claim priority to any of the Patents in **Exhibit D**; (c) any patents issuing on any such patent applications (referenced in (a) or (b)); (d) any substitutions, reexaminations, registrations, corrections, additions, confirmation patents, revivals, and/or any similar modifications of any such patents (referenced in (c)); (e) any extensions (including pediatric exclusivity, patent term extension, and supplementary patent certificate extensions), and/or restorations of such patents (referenced in (c) or (d)), and (f) subject to the terms and conditions of this Agreement all rights in any such patent applications or patents (in (a)-(e)).

"**Product Regulatory Approval**" means the Regulatory Approval to Commercialize the Product in the United States.

"**Product Regulatory Materials**" means all Regulatory Materials developed by DRL or any of its Affiliates, solely, or jointly with Journey, in the execution of the Development Plan, and any Regulatory Materials developed by DRL and submitted to FDA in connection with Regulatory Authority approval for Products (which, for the avoidance of doubt, includes the 20 mg and 40 mg products described in the IND), including all Regulatory Materials that reference the IND and that were developed prior to the Transfer Date.

"**Product Trademarks**" means the Trademark(s) to be used by or on behalf of Journey, its Affiliates, and/or Sublicensees in the Territory in connection with the Exploitation of the Products and any registrations thereof or any pending applications relating thereto in the Territory.

"**Publication**" has the meaning set forth in Section 11.3.

"**Quality Agreement**" has the meaning set forth in Section 4.3(a).

"**Quarterly Development Cost Estimate**" has the meaning set forth in Section 4.2(b).

"**Recipients**" has the meaning set forth in Section 11.1.

"**Regulatory Approval**" means, with respect to a particular country or other jurisdiction and product, a marketing authorization granted by the applicable Regulatory Authority in such country or other jurisdiction for such product, including, where applicable, (a) pricing or reimbursement approval in such country or other jurisdiction, (b) pre- and post-approval marketing authorizations (including any prerequisite Manufacturing approval or authorization related thereto) and (c) approval of Product Labeling. For clarity, in the United States, approval of the NDA constitutes Regulatory Approval in the United States.

"**Regulatory Approval Application**" means an application to the applicable Regulatory Authority for approval to Commercialize the Product in the Field in a particular country or other jurisdiction.

"**Regulatory Authority**" means, with respect to a particular country or other jurisdiction, any applicable Governmental Authority responsible for granting Regulatory Approvals of pharmaceutical products in such country or other jurisdiction.

"**Regulatory Costs**" means any and all out-of-pocket costs incurred by or on behalf of either Party after the Effective Date associated with preparing and filing any and all Regulatory Materials and communicating with any Regulatory Authorities, in each case, for purposes of obtaining, supporting, and/or maintaining Regulatory Approval for the Product in the Territory.

"**Regulatory Materials**" means Regulatory Approval Applications, investigational new drug applications (including the IND), clinical trial applications, submissions, notifications, communications, correspondence, registrations, Regulatory Approvals, or other filings made to, received from, or otherwise conducted with a Regulatory Authority to Exploit the Product in a particular country or other jurisdiction and all associated data and reports.

"**Revenue Based Payments**" has the meaning set forth in Section 7.6(a).

Revenue Generating Patents" means with respect to the Products and each country in the Territory, a Product Patent, Journey Patent, or DRL Background Patent includes a Valid Claim that Covers the composition of matter, method of use, method of formulation, and/or a method of administration of Products in such country.

"**Revenue Percentage Rate**" has the meaning set forth in Section 7.6(a).

"**Revenue Percentage Report**" has the meaning set forth in Section 7.6(b).

"**Revenue Percentage Term**" means, with respect to each country in the Territory, the period commencing on the First Commercial Sale of a Product in such country or other jurisdiction and ending upon the expiration or invalidation date of the last Revenue Generating Patent in such country.

"**Second Installment**" has the meaning set forth in Section 7.1.

"**Sublicensee**" means any Person to which (a) a sublicense is granted by Journey with respect to a license granted by DRL to Journey under this Agreement, or (b) a license is granted by Journey with respect to an Assigned Asset. For clarity, distributors, wholesalers, and/or resellers of the Product shall not be considered Sublicensees.

"**Successful**" means a completed Phase 3 Clinical Study that achieves all applicable primary endpoints with statistical significance (as defined in the applicable Phase 3 Clinical Study protocol).

"**Supply Agreement**" has the meaning set forth in Section 4.3(a).

"**Tax Treaty**" means the Convention between the Government of the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, together with a related Protocol, signed at New Delhi on September 12, 1989, as amended, modified, and/or supplemented from time to time (including, without limitation, and future protocols thereto), or any substitutions thereof.

"**Term**" has the meaning set forth in Section 12.1.

"**Territory**" means, collectively, all the countries and jurisdictions in the world other than the DRL Territory.

"**Third Party**" means any individual, corporation, partnership, limited liability company, trust, unincorporated association, Governmental Authority or other entity or body other than DRL or Journey or an Affiliate of either of them.

"**Third Party Infringement Claim**" has the meaning set forth in Section 8.9(a).

"**Third Party Supplier**" means any Third Party that Journey contracts with or otherwise appoints to Manufacture and supply the Product to Journey, its Affiliates, and/or its Sublicensees.

"**Trademark**" means any word, name, symbol, color, designation or device or any combination thereof that functions as a source identifier, including any trademark, trade dress, brand mark, service mark, trade name, brand name, logo, business symbol, and/or internet domain names, whether or not registered.

"**Transfer Date**" means the later of (a) date on which DRL has received all Milestone Payments in full owed by Journey pursuant to Section 7.1 and Section 7.2, and (b) the date on which DRL has been reimbursed in full for all DRL Development Costs that are not disputed in good faith by Journey.

"**United States**" or "**U.S.**" means the United States of America, including all possessions and territories thereof.

"**Upfront Payment**" has the meaning set forth in Section 7.1.

"**Uplisting**" has the meaning set forth in Section 7.9(a).

"**Valid Claim**" means a claim of (a) any issued and unexpired patent whose validity, enforceability, or patentability has not been affected by any of the following: (i) revocation; or (ii) a holding, finding, or decision of invalidity, unenforceability, or non-patentability or (b) a pending patent application that is filed and prosecuted in good faith and no more than three (3) years have elapsed from its earliest priority date.

"**Wind Down Period**" means, in the event of a termination of this Agreement prior to the Transfer Date, the period of "winding down" during which DRL continues to conduct one or more Clinical Studies with respect to the Product pursuant to Section 12.9(d)(iii) or as required pursuant to DRL's then-current policies or Applicable Law.

ARTICLE 2
LICENSES AND RIGHTS OF REFERENCE

2.1 Grants prior to Transfer Date.

(a) DRL License Grant to Journey. Subject to the terms and conditions of this Agreement, DRL hereby grants to Journey (i) a sublicensable, transferrable (subject to Section 14.6), exclusive (except as to DRL with regard to its performance of its obligations under the Development Plan) license under the Product IP, and (ii) a sublicensable, transferrable (subject to Section 14.6), non-exclusive license under the DRL Background IP, in each case ((i) and (ii)), for Journey to Exploit the Product in the Field in the Territory until the Transfer Date. Journey and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.1(a) to any Third Party (across multiple levels/tiers); provided that, in each such case, Journey shall be responsible for any such Third Party as if Journey were exercising such sublicensed rights itself under this Agreement.

(b) Journey License Grant to DRL. Subject to the terms and conditions of this Agreement, Journey hereby grants to DRL and its Affiliates (i) a royalty-free, non-transferable (subject to Section 14.6), sublicensable, non-exclusive license under the Journey Improvements solely for DRL to Develop the Products in accordance with the Development Plan, and (ii) a royalty-free, transferable, sublicensable, exclusive license under the Journey Improvements and Product Know-How for DRL to Exploit the Products in the Field in the DRL Territory until the Transfer Date. DRL and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.1(b) to any Third Party; provided that, in each such case, DRL shall be responsible for any such Third Party as if DRL were exercising such sublicensed rights itself under this Agreement.

2.2 Grants after Transfer Date. On the Transfer Date, the following license grants will automatically become effective and be in full force:

(a) DRL License Grant to Journey. Subject to the terms and conditions of this Agreement, DRL hereby grants to Journey and its Affiliates a sublicensable, transferrable (subject to Section 14.6), and exclusive license under the DRL Background IP for Journey and its Affiliates and their respective Sublicensees to Exploit the Products in the Field in the Territory on and after the Transfer Date; provided that Journey may Manufacture, or have Manufactured, Develop, and/or have Developed, the Product anywhere in the world. Journey and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.2(a) to any Third Party and Journey will have the right to permit such Sublicensees to grant further sublicenses to their Sublicensees (through multiple levels); provided that, in each such case, Journey shall be responsible for any such Third Party as if Journey were exercising such sublicensed rights itself under this Agreement.

(b) Journey License Grant to DRL. Subject to the terms and conditions of this Agreement, Journey hereby grants to DRL and its Affiliates a royalty-free, sublicensable, transferable (subject to Section 14.6), irrevocable, and exclusive license under (i) the Journey Improvements and Product Know-How, and (ii) to the extent Journey or its Affiliates at any time after the Transfer Date Controls a Patent that Covers the Product in the DRL Territory, under any such Patents, to, in each case (i) and (ii), Exploit the Product in the Field in the DRL Territory on and after the Transfer Date; provided that DRL may Manufacture, or have Manufactured, Develop, and/or have Developed, the Product anywhere in the world. DRL and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.2(b) to any Third Party and DRL will have the right to permit such Sublicensees to grant further sublicenses to their Sublicensees (through multiple levels); provided that, in each such case, DRL shall be responsible for any such Third Party as if DRL were exercising such sublicensed rights itself under this Agreement.

(c) DRL Grant of Right of Reference to Journey. Subject to the terms and conditions of this Agreement, DRL hereby grants to Journey and its Affiliates a sublicensable, transferrable (subject to Section 14.6), exclusive (even as to DRL and its Affiliates), and irrevocable license and right of reference under all Regulatory Approvals and any other Regulatory Materials that DRL or its Affiliates Control with respect to the Product to enable Journey to Exploit the Product in the Field in the Territory on and after the Transfer Date. Journey and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.2(c) to any Third Party and to permit such Sublicensees to grant further sublicenses to their Sublicensees (through multiple levels); provided that, in each such case, Journey shall be responsible for any such Third Party as if Journey were exercising such sublicensed rights itself under this Agreement.

(d) Journey Grant of Right of Reference to DRL. Subject to the terms and conditions of this Agreement, Journey hereby grants to DRL and its Affiliates an irrevocable, royalty-free, sublicensable, transferrable (subject to Section 14.6), exclusive license and right of reference under all Regulatory Approvals and any other Regulatory Materials that Journey or its Affiliates Control with respect to the Product (including the Product Regulatory Approval) to enable DRL to Exploit the Products in the Field in the DRL Territory. DRL and its Affiliates shall have the right to sublicense the rights and obligations granted to it under this Section 2.2(d) to any Third Party and to permit such Sublicensees to grant further sublicenses to their Sublicensees (through multiple levels); provided that, in each such case, DRL shall be responsible for any such Third Party as if DRL were exercising such sublicensed rights itself under this Agreement.

2.3 Covenant not to Sue. DRL on behalf of itself, its Affiliates, and their successors and assigns, hereby covenants not to initiate any judicial or administrative proceeding in the Territory against Journey, its Affiliates, Sublicensees, or any customer of any thereof, or the successors or assigns of any thereof, based on infringement of any Patent or any other intellectual property rights that are (a) Controlled by DRL at any time during the Term, and (b) are either (i) licensed to Journey pursuant to Section 2.1(a) and Section 2.2(a) and such Patent is being Exploited by Journey within the scope of such licenses, or (ii) not identified to Journey as a potential DRL Background Patent or potential Product Patent pursuant to Section 8.5.

2.4 No Implied Licenses. Except as explicitly set forth in this Agreement, neither Party will be deemed to have granted the other Party any license or other right to any intellectual property of such Party, whether by estoppel, implication, or otherwise.

ARTICLE 3
GOVERNANCE

3.1 Joint Development Committee.

(a) Formation and Responsibilities. Within thirty (30) days after the Effective Date, the Parties shall establish a joint development committee (the "JDC") for the overall coordination and oversight of the Development of the Product until the Transfer Date. The JDC shall have review, discussion or comment responsibilities for certain matters as specified in Section 3.1(b). The JDC has only the powers expressly assigned to it inSection 3.1(b) and elsewhere in this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, the JDC has no power to interpret, amend, modify, or waive compliance with this Agreement.

(b) Specific Responsibilities. The responsibilities of the JDC include the following matters:

(i) to review, discuss, finalize and approve the Development Plan at the initial meeting of the JDC;

(ii) to review, discuss and determine the allocation and status of activities undertaken by or on behalf of DRL as part of the Development Plan, including a review, discussion and determination of the estimated FTE Costs that may be incurred by DRL and the actual FTE Costs incurred by DRL, in the progress of Development under the Development Plan;

(iii) to review, discuss, and approve any amendments to the Development Plan, including any increases or decreases to the Development Costs Estimate in accordance with Sections 4.2(b) and 4.2(c);

(iv) to review, discuss, approve, and implement any amendment to the Development Plan to include a third (3rd) Phase 3 Clinical Study if such a third (3rd)Phase 3 Clinical Study is reasonably requested by Journey upon the completion of two (2) initial Phase 3 Clinical Studies where Journey reasonably determines one (1) of such Phase 3 Clinical Studies is not Successful;

(v) to appoint any other operating committees (collectively, the "**Other Committees**") from time to time during the Development Period as it deems fit, which will consist of equal numbers of officers or employees of each Party having sufficient seniority within the applicable Party to carry out the responsibilities of the applicable Other Committee;

(vi) to direct and oversee any Other Committees on all significant issues that fall within the purview of such committees; and

(vii) to perform such other functions as appropriate to further the purposes of this Agreement to the extent expressly set forth in this Agreement or determined by the Parties in writing.

(c) Members. Journey will appoint [***] ([***]) representatives to the JDC and DRL will appoint [***] ([***]) representatives to the JDC, each of whom will be an officer, employee, or other designee of such Party having sufficient relevant experience in Development-related matters and seniority and/or authority within or from the applicable Party to carry out the JDC's responsibilities. Either Party may designate an individual other than an officer or employee of such Party as a representative of the JDC so long as such Party shall cause such designee to agree in writing to be bound by obligations of confidentiality and non-use no less restrictive than ARTICLE 11, and a Party shall be liable for any breach of any obligations herein by its designee. The JDC may change its size from time to time by agreement in writing of the Parties, and each Party may replace its representatives at any time upon written notice to the other Party. If a JDC representative from either Party is unable to attend or participate in a meeting of the JDC, then the Party who designated such representative may designate an appropriately qualified substitute representative for the meeting. DRL and Journey shall jointly appoint a representative either from Journey or DRL on the JDC to serve as the chairperson of the JDC. The role of the chairperson is to convene and preside at all meetings of the JDC and to ensure the preparation of meeting minutes, but the chairperson will have no additional powers or rights beyond those held by other JDC representatives.

(d) Meetings. After the Effective Date and prior to the Transfer Date, the JDC shall meet at least [***] ([***]) times per Calendar Year unless the Parties mutually agree in writing to a different frequency for such meetings and at such other times specified in this Agreement. The JDC will hold its initial meeting within thirty (30) days of the Effective Date, at which time the JDC will finalize and approve the Draft Development Plan. Either Party may also call a special meeting of the JDC (by videoconference or teleconference) upon at least fifteen (15) Business Days' prior written notice to the other Party in accordance with Sections 4.2(b) and 4.2(c) and/or if such Party reasonably believes that a significant matter must be addressed before the next regularly scheduled meeting, and such Party shall provide the JDC materials reasonably adequate to enable an informed discussion by its members no later than ten (10) Business Days before the special meeting. The JDC may meet in person, by videoconference or by teleconference. Each Party shall pay for its own expenses relating to such meetings. As appropriate, other employee representatives of the Parties or their respective Affiliates may attend JDC meetings as non-voting observers or presenters. The chairperson of the JDC shall prepare reasonably detailed written minutes of all JDC meetings that reflect and include all material decisions made at such meetings. The JDC chairperson shall send draft meeting minutes to each member of the JDC for review and approval within twenty (20) Business Days after each JDC meeting.

3.2 Decision Making.

(a) Decisions. The JDC shall take action in good faith by consensus of the representatives present at a meeting at which a quorum exists, with each Party having a single vote irrespective of the number of representatives of such Party in attendance, or by a written resolution signed by at least one (1) representative appointed by each Party. If the JDC cannot, or does not, reach consensus on an issue for which it is responsible, then such issue may be resolved in accordance with ARTICLE 13 at the request of either Party; provided, however, that following DRL's receipt of the Second Installment from Journey, Journey shall have final decision-making authority over Development-related issues. The foregoing notwithstanding, in no event, shall Journey have final decision-making authority on matters relating to reimbursement of DRL Development Costs, FTE Rates, or FTE Costs.

(b) General. Nothing in this Agreement will be construed to limit a Party's (i) compliance with Applicable Laws or reporting requirements to Regulatory Authorities or (ii) sole discretion with respect to pricing decisions with respect to any Product in the Field in its respective territory. Notwithstanding anything to the contrary set forth in this Agreement, neither Party nor any of their respective Affiliates will be required by the JDC or any Other Committee to take any action that is not in compliance with such Party's ethical business practices and policies or that such Party reasonably believes is not in compliance with Applicable Laws.

3.3 Good Faith. In conducting themselves on the JDC or any Other Committees, all representatives of each Party shall consider reasonably and in good faith all input received from the other Party in carrying out its responsibilities set forth under Section 3.1(b) with the primary aim of the JDC and all actions of the Parties related to the Development Plan being to obtain Regulatory Approval for the Product, reasonably taking into account Journey's expectation to Exploit the Product outside the United States in the Territory, consistent with (i) the Parties' diligence obligations under Sections 4.1(a)(i) and 6.1, (ii) upholding patient safety, (iii) complying with Applicable Law, and (iv)

each Party complying with its own applicable code of business ethics or similar ethical policies.

3.4 Scope of Governance. Without limiting the Parties' obligations under ARTICLE 11, the Parties agree not to share or discuss at the JDC any strategic or commercially sensitive information beyond the scope contemplated by this Agreement.

3.5 Alliance Managers.

(a) Each of the Parties shall appoint a single employee to act as that Party's "**Alliance Manager**." The role of the Alliance Manager is to act as a point of contact between the Parties to assure a successful collaboration. The Alliance Managers may attend all JDC meetings and support the chairperson of the JDC in the discharge of their responsibilities. Alliance Managers shall be non-voting participants in such JDC meetings, unless they are also appointed members of the JDC; provided, however, that an Alliance Manager may bring any matter to the attention of the JDC if such Alliance Manager reasonably believes that such matter warrants such attention.

(b) Each Party may change its designated Alliance Manager from time to time upon email notification to the other Party's current Alliance Manager. Any Alliance Manager may designate a substitute to temporarily perform the functions of that Alliance Manager by written email notification to the other Party's current Alliance Manager.

(c) Each Alliance Manager will also: (i) coordinate cooperative efforts and communications between the Parties; and (ii) take responsibility for ensuring that governance activities, such as the conduct of required JDC meetings and production of meeting minutes, occur as set forth in this Agreement, and that relevant action items resulting from such meetings are appropriately carried out or otherwise addressed.

ARTICLE 4
DEVELOPMENT

4.1 Development Diligence and Responsibilities.

(a) Development Diligence.

(i) DRL shall, either directly or by or with an Affiliate or a sublicensee, use Commercially Reasonable Efforts to Develop the Product in the Field and to obtain a Product Regulatory Approval for the Product in accordance with the Development Plan.

(ii) If DRL determines that further Development or submission or handling of the Product Regulatory Approval for the Product is not Commercially Reasonable, DRL will notify Journey in writing of such a determination and promptly provide Journey with the ability to assume responsibility for and control of such further Development or Regulatory Approval Application at Journey's cost (subject to Section 4.1(a)(iv), including DRL promptly appointing Journey or its designee as DRL's regulatory agent solely with respect to the IND and the initial NDA).

(iii) If unreasonable delay in Development of the Product during the Development Period occurs and such delay is substantially due to protracted inaction by DRL and not caused, directly or indirectly, by Journey, its Affiliates, its Sublicensees or any Third Party over which DRL has no control, Journey will have the right to assume the Development of the Product (subject to Section 4.1(a)(iv), including DRL promptly appointing Journey or its designee as DRL's regulatory agent solely with respect to the IND and the initial NDA) upon either DRL written consent or resolution of any dispute concerning such delay or handling under ARTICLE 13.

(iv) In the event that Journey assumes Development of the Product prior to the Transfer Date in accordance with Section 4.1(a)(ii) or 4.1(a)(iii), (1) the obligations of DRL set forth in Sections 4.1(a)(i), 4.1(b), 4.4, and 4.5 shall become obligations of Journey, (2) DRL will appoint Journey or its designee as its "regulatory agent" for purposes of interacting with Regulatory Authorities solely with respect to the IND and the initial NDA; provided that (A) Journey will provide DRL with complete copies of any and all proposed drafts of all Regulatory Materials prior to submission to any Regulatory Authority, providing at least five (5) Business Days for DRL to review and comment thereon and (B) Journey will consider any comments provided by DRL within such five (5) Business Day period concerning such proposed submissions in good faith.

(v) For clarity, at all times prior to the Transfer Date, (1) DRL shall own the Regulatory Approvals (including the IND and the initial NDA) and Regulatory Materials, and (2) any FTE Costs that DRL incurs during such period, solely to the extent such FTE Costs relate to carrying out DRL's obligations under this Agreement, shall be DRL Development Costs.

(b) Development Responsibilities. DRL shall, either directly or by or with an Affiliate or a sublicensee conduct the activities under the Development Plan in a good scientific manner and comply in all material respects with Applicable Laws, including GMP, GCP and GLP, as applicable. In the event that DRL conducts the activities through or with a sublicensee, (i) DRL shall remain responsible for its obligations under this Section 4.1, and (ii) to the extent that a material portion of DRL's obligations will be assigned to a sublicensee, DRL shall obtain Journey's pre-approval of such sublicensee, not to be unreasonably withheld, conditioned or delayed. For clarity, Third Parties to any Development Contract are sublicensees of Journey, not sublicensees of DRL.

(c) Amendments to Development Plan. Either Party, directly or through its representatives on the JDC may propose amendments to the Development Plan from time to time as appropriate, including in light of changed circumstances. Such amendments shall be reviewed and approved in accordance with Section 3.2.

4.2 Development Costs.

(a) Estimated Development Costs. As of the Effective Date, estimated Development Costs (based on the Draft Development Plan) for the anticipated first (1^{st}) three (3) Development Period Years are set forth on **Exhibit E** (collectively, the "**Development Costs Estimate**"). The Development Costs are subject to the "Notes and Assumptions" set forth in the Draft Development Plan and are expected to total amounts equal or less than the amounts presented in **Exhibit E**. The Development Plan includes a reasonable description of the anticipated Development Costs for the anticipated first (1^{st}) three (3) Development Period Years**.** The Development Plan will include estimated FTE Costs and the Development Plan will list all FTEs (by title) with the associated FTE Rate and anticipated hours such FTE will dedicate to performing activities under the Development Plan in each applicable Development Period Year. The Annual FTE Costs based on the Draft Development Plan are expected to total to amounts equal or less than the amounts set forth on **Exhibit I**. If the JDC makes any changes to the Development Plan, or if any of the activities under the Development Plan are accelerated or delayed, the JDC will discuss in good faith whether **Exhibit E** and **Exhibit I** need to be amended by the Parties to reflect the then-current scope and timing of the activities set forth in the Development Plan. The Development Costs Estimate does not include any DRL Development Costs that may arise and that cannot reasonably be estimated by the Parties as of the Effective Date, including certain consultant costs and fees, intellectual property enforcement costs and as otherwise set forth in the "Notes and Assumptions" set forth in the Draft Development Plan (collectively, the "**Additional Costs**"). For clarity, the Development Cost Estimate only includes DRL's technology transfer obligations under Section 4.3(c) and the cost to Journey, and does not include any other costs and expenses that may be incurred by or on behalf of Journey in connection with the technology transfer,

which shall not be deemed "Development Costs". Promptly upon becoming aware of anticipated Additional Costs, DRL will promptly present the anticipated Additional Costs to the JDC for review whenever such anticipated Additional Costs arise during the Development Period. Additional Costs will be subject to JDC approval. Journey shall be solely responsible for all Development Costs, including any approved Additional Costs, incurred under the terms and conditions of this Agreement.

(b) Development Cost Planning and Special Meetings. At each JDC meeting, (i) each Party shall provide an update on current Development Costs incurred by or on behalf of each Party, and (ii) the JDC shall agree on an estimate of the Development Costs that may be incurred by or on behalf of each Party during the following Calendar Quarter (each a "**Quarterly Development Cost Estimate**"). In the event that either Party reasonably anticipates that the Quarterly Development Cost Estimate will be exceeded based on applicable activities to be performed under the Development Plan, the Party aware of such anticipated excess Development Costs shall promptly notify the other Party and the JDC will promptly meet to discuss such anticipated Development Costs in accordance with Section 3.1(d).

(c) Updated Development Costs Estimate and Development Costs Limits.

(i) The applicable Development Costs Estimate may increase or decrease during the Development Period, as determined by the JDC under Section 3.2(a) and Section 4.2(b). Each Party will use reasonable efforts to provide, to its knowledge and in good faith, accurate updates to the Development Costs to the JDC. Each Party shall provide reasonable updates to the JDC regarding any anticipated material increase or decrease in Development Costs during the Development Period of which such Party becomes aware. Journey will be responsible for any increase in Development Costs. If (1) an anticipated increase in Development Costs in a Development Period Year exceeds the applicable amount set forth in **Exhibit E** (as may be adjusted pursuant to this Section 4.1(c)) up to [***] ([***]%) in the first (1st) Development Period Year or by more than [***] ([***]%) in any Development Period Year thereafter (each a "**Development Costs Limit**") or (2) the anticipated Annual FTE Costs exceeds the applicable amount set forth in **Exhibit I** (as may be adjusted pursuant to this Section 4.1(c)) by more than [***] ([***]%) in the first (1st) Development Period Year or by more than [***] ([***]%) in any Development Period Year thereafter (each a "**FTE Cost Limit**"), then, in either case (1) or (2), the JDC will promptly meet in accordance with Section 3.1(d) and in good faith review anticipated and ongoing activities under the Development Plan and associated Development Costs and discuss in good faith (x) measures to reduce the anticipated increase in Development Costs and/or Annual FTE Costs, and (y) any potential revision to the applicable Development Costs Limit and/or FTE Cost Limit.

(ii) Unless the JDC approves in a meeting or Journey first expressly approves otherwise in writing, DRL will (a) use Commercially Reasonable Efforts not to incur Development Costs (except FTE Costs, which is addressed by clause (b)) in any applicable Development Period Year in excess of the applicable Development Costs Limit and (b) not incur Annual FTE Costs in excess of the applicable FTE Cost Limit. If during the Development Period either Party identifies any reasonably practical opportunity to change the Development Plan or any aspect of carrying out the Development Plan that would result in lower Development Costs than the applicable Development Cost Estimate and that would not reasonably result in a risk of (w) delayed performance of the Development Plan, (x) a delay in Product Regulatory Approval, (y) increased risk of FDA rejection of the initial NDA, and/or (z) material limitation on Journey's ability to Exploit the Product in the Territory, the JDC will promptly meet to discuss such opportunity and, if appropriate, adjust the Development Plan or applicable aspect of carrying out the Development Plan to so limit the applicable Development Costs. In no event will Journey be responsible for Development Costs that are greater than the actual Development Costs incurred in carrying out the Development Plan.

(d) Cessation of Certain Activities due to Excess Development Costs. Notwithstanding anything to the contrary in this Agreement, in the event that (i) DRL is obligated to obtain approval from Journey to incur Development Costs or any additional cost in excess of the Development Cost Estimate and/or Development Costs Limit, and (ii) Journey (or the JDC as a result of the action or inaction of Journey representative(s) thereon) has not approved such Development Costs or increase to the Development Costs Estimate and/or Development Costs Limit, DRL shall not be deemed to be in breach of this Agreement and will not be liable to Journey for breach of this Agreement (including, for clarity, under Section 4.1(a)(i)) based on DRL not performing any of the proposed activities associated with any unapproved additional costs in excess of the Development Costs Estimate and/or Development Costs Limit.

(e) Development Contracts. Journey shall negotiate and enter into any contracts with contract research organizations, consultants, or other service providers specified in the Development Plan (each, a "**Development Contract**"). In carrying out the Development Plan, DRL may assist Journey with the identification of such contract research organizations, consultants, or other service providers and in obtaining initial proposals, bids, or draft agreements for Journey's consideration. DRL will be primarily responsible to negotiate the non-financial terms and conditions of the Development Contracts (which will include provisions providing for confidentiality of Phase 3 Clinical Study data, compliance with Applicable Laws, and assignment of any inventions and other material intellectual property developed in the conduct of activities under such Development Contracts to Journey) and will assist Journey in Journey's negotiation of the financial terms and conditions of the Development Contracts. Journey hereby agrees that it is solely responsible for the financial obligations under each Development Contract. All Information, studies and any other data produced under any Development Contract shall be Journey Know-How.

(f) Regulatory Costs. Journey shall be solely responsible for the payment of all Regulatory Costs and shall make timely payments to the applicable Regulatory Authorities on or before the date on which such payments are due. To the extent DRL becomes aware of any Regulatory Costs that are due and owing to any Regulatory Authority that are not in the Development Plan, DRL shall promptly notify Journey of such Regulatory Costs and Journey shall promptly make the applicable payments. DRL will use good faith efforts to ensure that the JDC is notified as soon as DRL is aware that incurring such Regulatory Costs is likely to be necessary to carry out the Development Plan.

(g) Payment of DRL Development Costs. DRL shall invoice Journey for all DRL Development Costs along with suitable documentation evidencing each applicable cost and Journey shall pay all undisputed DRL Development Costs within thirty (30) calendar days of receipt of an applicable invoice.

(h) Information Rights. Beginning on the Effective Date and ending on the Transfer Date, Journey shall provide DRL with unaudited balance sheets semi-annually (within thirty (30) days after June 30 and within thirty (30) days after December 31) ("**Financial Statements**"). All Financial Statements delivered to DRL shall be prepared in good faith consistent with the normal practices of Journey and/or its Affiliates, and, to Journey's knowledge, be accurate.

4.3 Supply of the Product and Technology Transfer.

(a) Commercial Supply. Within one hundred eighty (180) days of the Effective Date, the Parties shall in good faith negotiate a commercial supply agreement (the "**Supply Agreement**") in accordance with the Key Supply Terms attached hereto as **Exhibit F**, which shall include an associated quality agreement (the "**Quality Agreement**"), pursuant to which DRL shall supply Journey with the Product.

(b) Clinical Supply. Manufacture of the clinical supply of the Product required under the Development Plan shall be procured by Journey from DRL on a purchase order-by-purchase order basis, DRL will supply clinical supply of the Product directly to the locations designated by the applicable contract research organization. In addition, Journey shall purchase from DRL the registration batches, stability batches, and any other Product supply reasonably necessary to carry out the Development Plan. DRL shall provide Journey with an invoice for all costs and expenses related to Manufacture of clinical supplies, registration batches, and such other supplies of the Product in accordance with Section 4.2(g).

(c) Technology Transfer. Journey will have the right as of the Transfer Date to source supply of the Product from Third Party Suppliers for Development and Exploitation in the Territory. Within four (4) months of any request from Journey that is made any time after the two (2) month anniversary of the Effective Date, DRL will provide the Information that is reasonably required to establish, qualify, and/or enable one (1) Third Party Supplier to supply the Product in the Territory to Journey, its Affiliates, or Sublicensees, and to include information concerning such Third Party Supplier in the NDA and/or other applicable Regulatory Materials to allow Journey to use such Third Party Supplier as of the Transfer Date as an alternative supplier to DRL; *provided*, *however*, that (i) Journey shall bear all costs, including reimbursement of DRL FTE costs, associated with such activities; and (ii) that such Third Party Supplier shall enter into a three-party confidentiality agreement with DRL and Journey, in a form reasonably acceptable to DRL. Throughout the Term, DRL will not supply Products to any Third Party in the Territory that intends to Commercialize Products in the Territory other than a Sublicensee of Journey or other Person that Journey authorizes to receive Product from DRL. Beginning on the Transfer Date, Journey will have the right to obtain part of its supply of the Product from Third Party Suppliers for Commercialization in the Territory, subject to any applicable minimum requirements included in the Key Supply Terms.

4.4 Regulatory Matters prior to the Transfer Date.

(a) Clinical Trials; Regulatory Approvals. Subject to Section 4.1(a)(iv), DRL will be the "sponsor" of all Clinical Studies conducted by DRL under the Development Plan up to the Transfer Date. Subject to Section 4.1(a)(iv), as between the Parties, at any time prior to the Transfer Date, DRL shall have the primary responsibility to (i) prepare, obtain, and maintain the Regulatory Approvals and other submissions, and (ii) approve any communications with any Regulatory Authority, in each case, for the Product. DRL will provide Journey with complete copies of any and all proposed drafts of all Regulatory Materials prior to Regulatory Authority submission prior to the Transfer Date, providing at least five (5) Business Days for Journey to review and comment thereon. DRL will consider any comments provided by Journey within such five (5) Business Day period concerning such proposed submissions in good faith and DRL will adopt any Journey suggestion related thereto that would reasonably be determined to enhance the value of the Assigned Assets and/or increase the speed of approval of Product Regulatory Approval. Notwithstanding the foregoing, during NDA review time, DRL and Journey will work together in a reasonable timeframe to submit the responses to FDA queries or requests for information in FDA recommended timelines, which may be less than five (5) days. To the extent permitted under Applicable Laws, DRL will provide Journey with sufficient advance notice of any meetings with any Regulatory Authority prior to the Transfer Date. To the extent permitted under Applicable Laws and by FDA, DRL shall allow Journey to discuss with DRL, prepare for, and permit up to three (3) employees of Journey reasonably observe and/or participate in such meetings with Regulatory Authorities, provided that DRL will, as sponsor, have primary responsibility for the conduct of such meetings with Regulatory Authorities. On and after the Effective Date until the Transfer Date, DRL will provide to Journey complete copies of (i) any material correspondence DRL receives from any Regulatory Authority or other Governmental Authority related to the Product in the Territory, and (ii) any final submission that DRL makes to any Regulatory Authority relating to the Product in the Territory, in each case, within five (5) Business Days of such receipt or submission.

(b) Communication with Regulatory Authorities. Except as provided herein or otherwise agreed to by DRL in writing, prior to the Transfer Date, and subject to the provisions of Section 4.4(a), Journey shall not (i) own, obtain or maintain the IND or other Regulatory Approval with respect to the Product, or (ii) communicate with any Regulatory Authority regarding the Product (1) in writing, without DRL's prior written approval of the form and content of such written communication, which approval will not be unreasonably conditioned, delayed, and/or withheld, or (2) orally (including in connection with any meeting, conference or discussion) other than with DRL's prior written approval of the forum, form, and content of such oral communication, which approval will not be unreasonably conditioned, delayed, and/or withheld. At any time prior to the Transfer Date, if Journey receives any correspondence from any Regulatory Authority related to the Product, Journey shall provide a copy of such correspondence to DRL within ten (10) days of such receipt. DRL shall have the right to prepare any response to any Regulatory Authority with respect to such correspondence consistent with the provisions of Section 4.4(a). If at any time during the Term, DRL receives any correspondence from any Regulatory Authority in the Territory that (x) solely relates to the Product, or (y) that relates to the Product, in each case (x) and (y), DRL shall provide a complete and accurate copy of such correspondence to Journey within three (3) Business Days of receipt; provided that in the case of (y), DRL may redact any portion of such correspondence that is (A) confidential and/or proprietary to a Third Party, and/or (B) related to a product that is not the Product.

4.5 Development Records. Prior to the Transfer Date and for a period of three (3) years thereafter or for such longer period as may be required by Applicable Law, DRL shall maintain complete, current, and accurate records of all activities conducted by or on behalf of DRL under the Development Plan, that were conducted prior to the Effective Date in connection with clinical and/or nonclinical development of the Product, and/or that are otherwise related to any Regulatory Approval or Clinical Study that includes the Product. Copies of any all such records will be transferred to Journey on or promptly following the Transfer Date in accordance with ARTICLE 5.

ARTICLE 5
ASSET ASSIGNMENT

5.1 Asset Assignment; Know-How Transfer. Effective as of the Transfer Date, pursuant to the Assignment Agreements, DRL assigns, sells, transfers, and conveys to Journey and Journey accepts from DRL all right, title and interest in and to, all of the Assigned Assets, free and clear of any Encumbrances. For the avoidance of doubt, the assignment, sale, transfer, and conveyance of the Assigned Assets will not occur until Journey has paid DRL (a) the Second Installment and all Milestone Payments in full owed by Journey pursuant to Section 7.2, and (b) all DRL Development Costs that are not disputed in good faith by Journey. In order to effectuate the Transfer Date, Journey shall provide written notice to DRL no less than two (2) Business Days prior to such Transfer Date, provided that the timing and/or form of such notice will have no effect on the assignment, sale, transfer, and conveyance of the Assigned Assets. If DRL has received all Milestone Payments in full owed by Journey pursuant to Section 7.1 and Section 7.2, and DRL has been reimbursed in full for all DRL Development Costs that are not disputed in good faith by Journey, the assignment, sale, transfer, and conveyance of the Assigned Assets will occur on, and the Transfer Date will be, the date specified by Journey in any such notice.

5.2 Assigned Assets. The "**Assigned Assets**" means collectively the following:

(a) The Product IP;

(b) The Product Regulatory Approval;

(c) The Product Regulatory Materials; and

(d) The Product Know-How.

Promptly following the Transfer Date, DRL shall make available to Journey all electronically held Assigned Assets. In the event that, where reasonably necessary, Journey requests original documents of the items set forth in Sections 5.2(b)-(c) that are not maintained electronically and such documents are in the possession of or readily accessible by DRL or its Affiliates, DRL shall, make available such original documents to Journey for pick-up at DRL's facility, at Journey's sole cost and expense, during normal business hours on a date mutually agreeable to the Parties following the Transfer Date.

5.3 Assumed Liabilities. As of the Transfer Date, Journey shall assume and pay, perform, or otherwise discharge, in accordance with their respective terms and subject to their respective conditions thereof, all Obligations that arise out of or are related to Journey's ownership, operation or use of, or exercise of rights and performance under, the Assigned Assets or the Products after the Transfer Date (the "**Assumed Liabilities**").

5.4 Retained Rights. DRL retains the right to Exploit the Product in the DRL Territory. For purposes of clarity, except as expressly set forth in this Agreement, neither Party receives any rights with respect to the Product from the other Party. Journey shall not, directly or indirectly, market, promote, sell, offer for sale, and/or distribute the Product outside the Territory and DRL shall not, directly or indirectly, market, promote, sell, offer for sale, and/or distribute the Product in the Territory, provided that (a) Journey may Manufacture or Develop the Product and/or have the Products Manufactured or Developed outside the Territory for sale within the Territory, and (b) DRL may Manufacture or Develop the Product and/or have the Products Manufactured or Developed outside the DRL Territory for sale within the DRL Territory.

ARTICLE 6
DEVELOPMENT AND COMMERCIALIZATION BY JOURNEY

6.1 Diligence. Following Transfer Date, Journey shall, directly and/or by or with an Affiliate and/or a Sublicensee, use Commercially Reasonable Efforts to Develop and Commercialize the Product in the Field in the Territory; provided that Journey shall (x) launch the Product in the United States within six (6) months from the receipt of Product Regulatory Approval, and (y) initiate Development of the Product in the Field in the European Union within twenty-four (24) months from the receipt of Product Regulatory Approval.

6.2 Responsibility for Development and Commercialization in the Territory. Subject to the terms and conditions of this ARTICLE 6, Journey shall have sole control over and decision-making authority for, at its cost and expense, the Development, Manufacture, and Commercialization of the Products in the Territory. Journey shall, directly and/or by or with an Affiliate and/or a Sublicensee, conduct all Development, Manufacturing, and Commercialization activities related to the Product in a good scientific manner and comply in all material respects with Applicable Laws, including GMP, GCP and GLP, as applicable.

6.3 Cross-Territorial Restrictions.

(a) Journey Restrictions. As permitted by Applicable Law, Journey shall not, and shall ensure that its Affiliates and Sublicensees will not, either directly or indirectly, knowingly promote, market, distribute, import, sell or have sold the Product, including via internet or mail order, into the DRL Territory. As to the DRL Territory, Journey shall not, and shall ensure that its Affiliates and Sublicensees will not: (i) engage in any advertising or promotional activities relating to any Product that are directed primarily to customers or other purchasers or users of the Product located in the DRL Territory, (ii) solicit orders for the Product from any prospective purchaser located in the DRL Territory, and/or (iii) sell or distribute any Product to any Person in the Territory who it knows intends to sell the Product in the DRL Territory. If Journey receives any order from a prospective purchaser located in the DRL Territory, then Journey shall immediately refer that order to DRL, and Journey shall not accept any such orders unless otherwise agreed to in writing by DRL. Journey shall not deliver or tender (or cause to be delivered or tendered) any Product for sale into the DRL Territory other than for use or Commercialization by or on behalf of DRL and its Affiliates in accordance with this Agreement.

(b) DRL Restrictions. As permitted by Applicable Law, DRL shall not, and shall ensure that its Affiliates will not, either directly or indirectly, knowingly promote, market, distribute, import, sell or have sold the Product, including via internet or mail order, into the Territory. As to the Territory, DRL shall not, and shall ensure that its Affiliates will not: (i) engage in any advertising or promotional activities relating to any Product that are directed primarily to customers or other purchasers or users of the Product located in the Territory, (ii) solicit orders from any prospective purchaser located in the Territory, and/or (iii) sell or distribute the Product to any Person in the DRL Territory who it knows intends to sell the Product in the Territory. If DRL receives any order from a prospective purchaser located in the Territory, then DRL shall immediately refer that order to Journey, and DRL shall not accept any such orders. DRL shall not deliver or tender (or cause to be delivered or tendered) the Product into the Territory.

(c) Cooperation in Stopping Importation of Other Party's Products. Neither Party will be liable to the other Party for internet information available to persons outside of the Territory in the case of Journey and outside of the DRL Territory in the case of DRL or that is broadcast outside of the Territory or DRL Territory, respectively, due to regular cross-border television and/or radio broadcasting or other broadly distributed media. Throughout the Term, the Parties shall promptly cooperate in good faith and at no cost to the other Party in implementing good faith Commercially Reasonable procedures and taking any other Commercially Reasonable requested actions to prevent the sale and distribution in the Territory of any version of the Product sold by DRL in the DRL Territory and the sale and distribution in the DRL Territory of any version of the Product sold by Journey in the Territory.

6.4 Development, Manufacturing and Commercialization Updates. Once per Calendar Year, at the reasonable written request of DRL, Journey shall provide reasonable written updates to DRL regarding the status of Regulatory Authority approval of the Product and its Development, Manufacturing and Commercialization activities with respect to the Products in the Territory.

6.5 Regulatory Matters after the Transfer Date.

(a) Cooperation. After the Transfer Date, upon a Party's reasonable request, each Party shall provide the other Party with any reasonably requested assistance and cooperation (i) to enable such other Party to obtain Regulatory Approval for the Products in the Territory or DRL Territory, as applicable, and (ii) in furtherance of effecting such other Party's rights and licenses granted pursuant to Section 2.2, which shall in each case ((i) and (ii)) include each Party providing access to the such Party's Regulatory Materials, as well as supplying the other Party with Product, at no cost to the requesting Party.

(b) Clinical Trials; Regulatory Approvals.

(i) If, after the Transfer Date, (A) DRL conducts a Clinical Study for the Product for a Regulatory Approval in the DRL Territory, or (B) Journey conducts a Clinical Study for the Product for a Regulatory Approval in the Territory, then the Party conducting such Clinical Study will be the "sponsor" of such Clinical Study.

(ii) As between the Parties, after the Transfer Date, (A) DRL shall have the sole right to (1) prepare, obtain, and maintain Regulatory Approvals and other submissions, and (2) approve any communications with any Regulatory Authority, in each case, for the Product in the DRL Territory, and (B) Journey shall have the sole right to (1) prepare, obtain, and maintain Regulatory Approvals and other submissions, and (2) approve any communications with any Regulatory Authority, in each case, for the Product in the

Territory.

(iii) At either Party's reasonable request, the other Party shall provide the requesting Party with copies of all Regulatory Materials filed by or on behalf of it with Regulatory Authorities to the extent necessary or useful in allowing the requesting Party to seek, obtain, and/or maintain Regulatory Approval for the Products in the Field in the DRL Territory or Territory, as applicable, the information in which Regulatory Materials the requesting Party may solely use for the purpose of seeking, obtaining, and maintaining Regulatory Approval for the Products in the Field in the DRL Territory or Territory, as applicable.

(c) Communication with Regulatory Authorities. After the Transfer Date, in no event shall (i) Journey (A) own, obtain or maintain any IND or other Regulatory Approval with respect to the Product in the DRL Territory, or (B) communicate with any Regulatory Authority regarding the Product in the DRL Territory (1) in writing, without DRL's prior written approval of the form and content of such written communication, or (2) orally (including in connection with any meeting, conference or discussion) with any Regulatory Authority other than with DRL's prior written approval of the forum, form and content of such oral communication, or (ii) DRL (A) own, obtain or maintain any IND or other Regulatory Approval with respect to the Product in the Territory, or (B) communicate with any Regulatory Authority regarding the Product in the Territory (1) in writing, without Journey's prior written approval of the form and content of such written communication, or (2) orally (including in connection with any meeting, conference or discussion) with any Regulatory Authority other than with Journey's prior written approval of the forum, form and content of such oral communication At any time after the Transfer Date, if a Party receives any correspondence from any Regulatory Authority related to the Product sold by or on behalf of the other Party, such Party shall provide a copy of such correspondence to the other Party within five (5) days of such receipt. The other Party shall have the right to prepare any response to any Regulatory Authority with respect to such correspondence; provided that the other Party shall consider in good faith any comments received from such Party.

(d) Regulatory Costs. Journey shall be solely responsible for all Regulatory Costs incurred by or on behalf of Journey with respect to preparing, filing, obtaining, and maintaining Regulatory Approvals for the Products from the Regulatory Authorities in the Territory. DRL shall be solely responsible for all Regulatory Costs incurred by or on behalf of DRL with respect to preparing, filing, obtaining, and maintaining Regulatory Approvals for the Products from Regulatory Authorities in the DRL Territory.

(e) Notification of Threatened Action.

(i) By DRL. DRL shall immediately notify Journey of any information it receives regarding any threatened or pending action, inspection, and/or communication by or from any Regulatory Authority that may affect or otherwise relate to the Development, Commercialization, Manufacture, or Regulatory Approval of the Product in the Territory.

(ii) By Journey. Journey shall immediately notify DRL of any information it receives regarding any threatened or pending action, inspection, and/or communication by or from any Regulatory Authority that may affect or otherwise relate to the Development, Commercialization, Manufacture, or Regulatory Approval of the Product in the DRL Territory.

(iii) Procedure. Upon receipt of such information described in Section 6.5(e)(i) and 6.5(e)(ii), the Parties shall review and discuss a mutually acceptable procedure for taking appropriate action.

(f) Recalls. DRL shall have the sole right to determine and initiate all recalls, market suspensions or market withdrawals undertaken for the Product in the DRL Territory, and DRL (or its designee) shall be solely responsible for the execution thereof. Journey shall have the sole right to determine and initiate all recalls, market suspensions or market withdrawals undertaken for the Product in the Territory, and Journey (or its Sublicensee or designee) shall be solely responsible for the execution thereof.

(g) Adverse Event Reporting and Safety Data Exchange. No later than one hundred eighty (180) days following the submission of the first Regulatory Approval Application for a Product in any country and/or other jurisdiction in the DRL Territory, and in any event prior to any Commercialization of the Product by DRL in the DRL Territory, the Parties shall define and finalize the actions that the Parties shall employ with respect to the Product to protect patients and promote their well-being in a written pharmacovigilance agreement (the "**Pharmacovigilance Agreement**"). In the event of any inconsistency between the provisions of the Pharmacovigilance Agreement and the provisions of this Agreement, the wording of the Pharmacovigilance Agreement shall govern any and all patient safety matters, and this Agreement shall govern all other matters.

ARTICLE 7
COMPENSATION

7.1 Upfront Payment. In consideration of DRL's grant of the licenses granted to Journey under Section 2.1(a), Journey shall pay to DRL a one-time, non-refundable, upfront fee of Ten Million Dollars ($10,000,000) (the "Upfront Payment"). The Upfront Payment will be paid in two installments. The first installment of the Upfront Payment in the amount of Two Million Dollars ($2,000,000) (the "**First Installment**") will be paid on the Effective Date. The second installment of the Upfront Payment in the amount of Eight Million Dollars ($8,000,000) (the "**Second Installment**") will be paid by the ninetieth (90^{th}) day following the Effective Date.

7.2 Development Milestone Payments. As further consideration for the grant of the licenses granted to Journey under Section 2.1(a) (with respect to Milestone Event No. 1), and as consideration of DRL's transfer, assignment, sale, and conveyance of the Assigned Assets pursuant Section 5.1, Journey shall pay DRL the following one-time Development Milestone Payments within thirty (30) days after the first achievement of the corresponding "Milestone Event" as set forth in Table 7.2. The Milestone Payments set forth in this Section 7.2 are payable only once (*i.e.*, the first time the applicable Milestone Event is achieved for the Product), and is non-refundable, non-creditable, once paid. For clarity, this means that the maximum Development Milestone Payment amount payable under this Section 7.2 is [***] ($[***]). DRL shall notify Journey promptly following the date of the occurrence of a Milestone Event.

Table 7.2 – Development Milestone Payments

No.	*Milestone Event*	*Milestone Payments*
1.	[***]	[***]

2.	[***]	[***]

For clarity, Milestone Event No. 2 set forth in Table 7.2 shall only be reduced in the event that one of the first two (2) Phase 3 Clinical Studies is not Successful, and Journey reasonably believes that Regulatory Approval for a rosacea Indication is unlikely without conducting a third (3rd) Phase 3 Clinical Study.

7.3 Milestone for An Initial Non-Rosacea Indication. As further consideration of DRL's transfer, sale, assignment, and conveyance of the Assigned Assets pursuant Section 5.1, Journey shall pay DRL the following one-time Development Milestone Payment within thirty (30) days after the first achievement by Journey (or its Affiliate, Sublicensee, or Acquiror) of the "Milestone Event" as set forth in Table 7.3. The Development Milestone Payment set forth in this Section 7.3 is payable only once (*i.e.*, the first time the milestone event is achieved for the Product) and is non-refundable once paid. For clarity, this means that the maximum Development Milestone Payment amount payable under this Section 7.3 is [***] ($[***]). Journey shall notify DRL promptly following the date of the occurrence of the Milestone Event.

	Table 7.3 – Development Milestone Payments	
No.	***Milestone Event***	***Milestone Payments***
1.	[***]	[***]

For the avoidance of doubt, Journey will have no obligation to obtain Regulatory Approval for any non-rosacea Indication that is not consistent with its application of Commercially Reasonable Efforts.

7.4 Launch Milestone Payments. As further consideration of DRL's transfer, sale, assignment, and conveyance of the Assigned Assets pursuant Section 5.1, Journey shall pay DRL the following one-time launch Milestone Payments within thirty (30) days after the first achievement by Journey (or its Affiliate, Sublicensee or Acquiror) of a "Milestone Event" set forth in Table 7.4. Each Milestone Payment set forth in this Section 7.4 is payable only once (*i.e.*, the first time the Milestone Event is achieved for the Product) and is non-refundable once paid. For clarity, this means that the maximum launch milestone amounts payable under this Section 7.4 is [***] ($[***]). Journey shall notify DRL promptly following the date of the occurrence of each Milestone Event. For the avoidance of doubt, Journey will have no obligation to obtain Regulatory Approval in any jurisdiction or country in the Territory outside of the United States and at least one country of the [***] that is not consistent with its application of Commercially Reasonable Efforts.

Table 7.4 – Launch Milestone Payments		
No.	***Milestone Event***	***Milestone Payment***
1.	[***]	[***]
2.	[***]	[***]

7.5 Net Sales Milestone Payments. As further consideration of DRL's transfer, sale, assignment, and conveyance of the Assigned Assets pursuant Section 5.1, Journey shall pay DRL within thirty (30) days following the end of an applicable Calendar Year, the highest "Milestone Payment" set forth in Table 7.5 out of all of the "Milestone Events" achieved by Journey (or its Affiliate, Sublicensee or Acquiror) in such Calendar Year. Within twelve (12) months following the payment of such Milestone Payment, Journey will pay to DRL (a) the next highest unpaid "Milestone Payment(s)" set forth in Table 7.5 for any "Milestone Event" previously achieved by Journey (or its Affiliate, Sublicensee, or Acquiror) or (b) if Journey achieves a Milestone Event associated with a higher Milestone Payment in a year following a previous Milestone Payment, Journey will only pay DRL the higher Milestone Payment. Once a Milestone Payment has been triggered under this Section 7.5, Journey is obligated to make payment on Milestone Events for all lower Milestone Payments than the highest achieved Milestone Payment until all Milestone Payments set forth in this Section 7.5 have been paid. Each Milestone Payment set forth in this Section 7.5 is payable only once (*i.e.*, the first time the Milestone Event is achieved) and is nonrefundable once paid. For clarity, this means that the maximum amount payable under this Section 7.5 is [***] ($[***]). Journey shall notify DRL promptly following the date of the occurrence of each Milestone Event.

	Table 7.5 – Net Sales Milestone Payments	
No.	***Milestone Event***	***Milestone Payment***
1.	[***]	[***]
2.	[***]	[***]

3.	[***]	[***]
4.	[***]	[***]
5.	[***]	[***]

[***]

7.6 Revenue Based Payments.

(a) Revenue Percentage Rates. As further consideration of DRL's transfer, assignment and conveyance of the Assigned Assets pursuant Section 5.1, during the Revenue Percentage Term, Journey shall pay to DRL the applicable revenue percentage rate set forth in Table 7.6 (the "**Revenue Percentage Rate**") of Net Sales in an applicable Calendar Quarter on a country-by-country basis ("**Revenue Based Payments**"), subject to adjustment as set forth inSection 7.6(c).

	Table 7.6 – (Non-Generic) Revenue Based Payments	
No.	***Aggregate Annual Net Sales***	***Revenue Percentage Rate***
1.	[***] ($[***])	[***] ([***]%)
2.	[***]	[***] ([***]%)
3.	[***] ($[***])	[***] ([***]%)

(b) Revenue Percentage Reports and Payments. Within thirty (30) days following the end of each Calendar Quarter, commencing with the Calendar Quarter in which the First Commercial Sale of the Product is made anywhere by Journey or its Affiliate or Sublicensee in the Territory, Journey shall provide DRL with a report (the "**Revenue Percentage Report**") of the amount of Net Sales in each country or other jurisdiction the Territory during the applicable Calendar Year and a calculation of the amount of the Revenue Based Payment due for each such country or other jurisdiction in the Territory on such Net Sales for such Calendar Quarter. Concurrent with the delivery of the Revenue Percentage Report, Journey shall pay in Dollars the Revenue Based Payment due to DRL under this Section 7.6 with respect to Net Sales for such Calendar Quarter.

(c) Revenue Based Payment Reduction for Generic Product. If in any country and/or other jurisdiction in the Territory during the Revenue Percentage Term a Generic Product with respect to the Product is launched in such country and/or other jurisdiction and there is (i) a sale of one or more Generic Products with respect to such Product in such country, and (ii) the Net Sales in a given twelve (12) month period following from the launch of a Generic Product are reduced by [***] ([***]%) from the twelve (12) month period immediately preceding the first sale of a Generic Product in a country, then the royalty rate for such Product with respect to such country shall thereafter be reduced by [***] ([***]%) from the applicable rate(s) set forth in Section 7.6(a). In the event that any Product Patent is challenged based on a claim of patent misuse or related legal theory based on the Revenue Based Payment provisions of this Agreement that poses any reasonable risk to the enforceability, validity, or other aspect of such Product Patents, the Parties will promptly negotiate a modification of the Revenue Based Payment provisions to eliminate such risk.

7.7 Protection Against Patent License Stacking. Journey shall be entitled to deduct, from any amounts otherwise owed to DRL as Revenue Based Payments, any royalties that Journey pays to Third Parties for any license or other right under any Third Party Patent that Journey determines is necessary for Journey to Exploit the Product in the Territory; provided that such deductions under this Section 7.7 shall not reduce the Revenue Based Payments in any Calendar Quarter by greater than [***] ([***]%).

7.8 Acquisition Consideration.

(a) Subject to Section 7.8(c), in the event that Journey, or its Affiliates, execute a definitive agreement for an Acquisition Event during the period beginning on the Effective Date and ending twenty-four (24) months after the Product Regulatory Approval, Journey shall pay to DRL an amount equal the following percentage of the Acquisition Product Value paid by an Acquiror within thirty (30) days after Acquiror makes such payment.

Table 7.8 – Acquisition Consideration		
No.	***Development Stage of Product as of the date of the Acquisition Event***	***Percentage of Acquisition Product Value Payable to DRL***

1.	[***]	[***] ([***]%)
2.	[***]	[***] ([***]%)

(b) For purposes of clarity, (i) the payment to DRL under this Section 7.8 shall only be payable once upon the first Acquisition Event to occur, and (ii) the Second Installment and all of the other payments set forth in Sections 7.2, 7.3, 7.4, 7.5, and 7.6 shall still be due to DRL from Journey or its successor after an Acquisition Event, even if an applicable milestone is achieved, or sales of the Product are made, by Acquiror.

(c) If Journey has issued common stock (or is required to issue common stock) or made a payment (or is required to make a payment) to DRL pursuant to Section 7.9(a) prior to the occurrence of an Acquisition Event, Journey shall have no further obligation under Section 7.8(a).

7.9 IPO / Uplisting Consideration.

(a) Subject to Section 7.9(c), if, at the close of the first trading day following the listing of Journey's common stock on a national stock exchange (the "**Uplisting**") (provided such Uplisting occurs after the Effective Date and before twenty-four (24) months after the Product Regulatory Approval), the market capitalization of all Journey equity securities, on a fully-diluted basis, is [***] ($[***]) or more, then Journey shall, at Journey's option, within thirty (30) days either: (a) issue to DRL a number of shares of the Journey's common stock with a dollar value equal to [***] ($[***]) as calculated using a fifteen (15) day volume weighted average price of Journey's closing price, measured fifteen (15) days following the Uplisting, without any additional consideration (financial or otherwise) from DRL, or (b) make a cash payment to DRL equal to [***] ($[***]).

(b) For purposes of clarity, the Second Installment and all of the other payments set forth in Sections 7.2, 7.3, 7.4, 7.5, and 7.6 shall still be due to DRL from Journey after an Uplisting.

(c) If Journey has made a payment (or is obligated to make a payment) to DRL pursuant to Section 7.8(a) prior to the occurrence of an Uplisting, Journey shall have no further obligation under Section 7.9(a).

(d) In the event that upon issuance of any shares of Journey's common stock, Journey requests that DRL enter into a lock-up agreement, the Parties shall negotiate such agreement in good faith, and DRL be required to enter into (i) a lock-up period of at least one-hundred eighty (180) days after the date of the Uplisting, (ii) restrictions on DRL to not, directly or indirectly, (1) offer for sale, sell, pledge, and/or otherwise dispose of (or enter into any transaction, agreement, or device that is designed to, or could be expected to, result in the disposition by any Person at any time in the future) any such shares or securities convertible into and/or exchangeable for such shares (2) enter into any swap or other derivatives transaction that transfers to any Person, in whole or in part, any of the economic benefits or risks of ownership of such shares, and (3) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of Journey, and (iii) other clauses that are customarily included in a lock-up agreement.

7.10 Foreign Exchange. For the purpose of calculating any sums due under, or otherwise reimbursable pursuant to, this Agreement (including the calculation of applicable Net Sales expressed in currencies other than Dollars), a Party shall convert any amount expressed in a foreign currency into Dollar equivalents using its or its Affiliate's or Sublicensee's standard conversion methodology consistent with Accounting Standards.

7.11 Payment Method; Late Payments. Journey shall make all payments due hereunder in Dollars to DRL by wire transfer of immediately available funds into an account designated by DRL. If any payment due to either Party under this Agreement is not paid when due, then such paying Party shall pay interest thereon (before and after any judgment) at an annual rate (but with interest accruing on a daily basis) equal to [***] ([***]%) per annum simple interest to run from the date on which payment of such sum became due until payment thereof in full together with such interest.

7.12 Records. Journey shall keep (and shall ensure that its Affiliates and its Sublicensees keep) such records as are required to determine, in accordance with Accounting Standards, Applicable Law, and this Agreement, the amounts or credits due under this Agreement, including Net Sales. Journey shall retain all such books, records, and accounts until the later of (a) three (3) years after the end of the period to which such books, records and accounts pertain, and (b) the expiration of the applicable tax statute of limitations (or any extensions thereof), or for such longer period as may be required by Applicable Law.

7.13 Audits. DRL may have a nationally recognized, independent certified public accountant access and examine during normal business hours, and upon at least thirty (30) days' prior written notice, those records of Journey (and its Affiliates and Sublicensees, as applicable) retained pursuant to Section 7.12 as may be reasonably necessary to determine, with respect to any Calendar Year ending not more than three (3) years before such request, the correctness or completeness of any report or payment made under this Agreement. If the audit report concludes that (a) additional amounts were owed by Journey, then Journey shall pay the additional amounts, or (b) excess payments were made by Journey, then DRL shall promptly issue a written credit for such excess payments which shall be applied to future payments, in either case ((a) or (b)), within forty-five (45) days after the date on which such audit report is delivered to both Parties. DRL shall bear the full cost of the performance of any such audit, unless such audit, which covers the entire Calendar Year, discloses a variance to the detriment of DRL that is the greater of (i) [***] ([***]%) of the amounts determined by the independent certified public accountant owed to DRL by Journey during such Calendar Year, or (ii) [***] ($[***]), in each of which cases ((i) and (ii)), Journey shall bear the full cost of the performance of such audit. The results of such audit will be binding on the Parties, absent manifest error. No such audit shall cover a Calendar Year(s) that has/have been previously audited. No audit will begin until Journey and the certified public accountant have entered into a suitable non-disclosure agreement and all information disclosed by Journey in such an audit will remain Confidential Information of Journey under this Agreement, *provided*, *however*, the results of audit shall be deemed the Confidential Information of both Parties and provided to both Parties by such auditor.

7.14 Taxes.

(a) Taxes on Income. Each Party shall pay all taxes imposed on its share of income arising directly or indirectly from the efforts of, or the receipt of any payment by, such Party under this Agreement.

(b) Taxes. All amounts payable under this Agreement, including the Upfront Payment, Milestone Payments, Revenue Based Payments, and other payments, are exclusive of all taxes. Each Party will be responsible for payment of any applicable Taxes relating to this Agreement.

(c) Tax Cooperation. Journey agrees to cooperate with DRL and to use reasonable efforts to reduce or eliminate tax withholding or similar obligations in respect of the Upfront Payment, Milestone Payments, Revenue Based Payments, and other payments made by Journey to DRL under this Agreement. Journey will take into account the Tax Treaty when determining the rate at which withholding tax will be deducted hereunder. The Parties agree that the maximum withholding tax, as of the Effective Date, is [***] ([***]%). Within thirty (30) days of the Effective Date, DRL shall deliver to Journey a properly completed Internal Revenue Service Form W-8BEN-E. DRL shall provide Journey with any other tax forms that may be reasonably necessary in order for Journey not to withhold tax or to withhold tax at a reduced rate under an applicable bilateral income tax treaty a reasonable time prior to the date the applicable payment is due. Journey shall provide DRL with reasonable assistance to enable the recovery, as permitted by Applicable Law, of withholding taxes, value added taxes or similar obligations resulting from payments made under this Agreement, such recovery to be for the benefit of DRL.

7.15 No Joint Venture. For clarity, notwithstanding the Revenue Based Payments described in Section 7.6, the Parties acknowledge that they are not sharing any losses arising from the Parties' performance of their respective obligations or exercise of their respective rights under this Agreement and nothing in this ARTICLE 7 shall be interpreted or construed to create an association, joint venture or partnership between the Parties.

ARTICLE 8
INTELLECTUAL PROPERTY MATTERS

8.1 Ownership of Existing Know-How and Patents. As between the Parties, all Information and Patents Controlled by a Party (with respect to DRL, except the Product IP) prior to the Effective Date or conceived, discovered, developed, or otherwise made separate and apart from this Agreement, shall be owned by the Party Controlling such Information and Patents.

8.2 Ownership of Product IP. As between the Parties, prior to the Transfer Date, all Product IP shall be owned by DRL. Subject to ARTICLE 5, as between the Parties, on and after the Transfer Date, all Product IP shall be owned by Journey.

8.3 Ownership of Journey Improvements. As between the Parties, Journey shall solely own any and all (a) Information that are conceived, discovered, developed, or otherwise made (i)(A) solely by or on behalf of a Party, and (B) jointly by or on behalf of Journey, on the one hand, and DRL, on the other hand, in each case ((A) and (B)), in the course of or as a direct result of the performance of the Development Plan, whether or not patentable, and/or (ii) by Journey during the Term that is (A) generally not known, and (B) necessary or used by Journey to Exploit the Products (collectively, the "**Journey Know-How**"), and (b) Patents directed to the Journey Know-How that are first disclosed in such Patent to the extent such Journey Know-How was conceived, discovered, developed or otherwise made before the Transfer Date (the "**Journey Patents**") and any other intellectual property rights with respect to the Journey Know-How (together with the Journey Know-How and Journey Patents, the "**Journey Improvements**").

8.4 Inventorship. Except as otherwise set forth in this Agreement, inventorship of patentable inventions conceived, discovered, developed, or otherwise made during the performance of activities pursuant to this Agreement will be determined in accordance with U.S. patent laws.

8.5 Addition of Patents to the Licenses Granted to Journey; Information Inquiry.

(a) As of the Effective Date, there are no DRL Background Patents that Cover the Product. If during the Term of this Agreement either Party identifies a Patent in the Territory, other than a Product Patent, that is Controlled by DRL or any of its Affiliates, which contains claims that Cover a Product that Journey is Exploiting in the Territory, the Party that identifies such Patent shall notify the other Party of the existence of a potential DRL Background Patent or Product Patent. Within thirty (30) days after the receipt of such notice, the Parties will promptly discuss in good faith whether such Patent should be included in the licenses granted to Journey hereunder as a DRL Background Patent or a Product Patent. If the Parties agree to designate any such Patent as a DRL Background Patent or a Product Patent, the Parties will promptly enter into an amendment to this Agreement identifying such DRL Background Patent or Product Patent.

(b) After the Transfer Date, prior to Journey incurring any substantial additional cost in Exploiting the Product or realizing a substantial reduction to the value of the Assigned Assets, Journey may confer with DRL to determine whether any DRL Background Know-How that is reasonably necessary (as such term is defined in the definitions of Product Know-How and DRL Background Know-How) exists. For clarity, DRL shall not be responsible for any such additional cost in Exploiting the Product incurred by or on behalf Journey and/or reduction in value of the Assigned Assets realized by Journey, including if (i) Journey does not confer with DRL prior to incurring such additional cost and/or realizing such reduction in the Assigned Assets, and/or (ii) no applicable DRL Background Know-How exists.

8.6 Prosecution of Patents.

(a) Product Patents and Journey Patents. As between the Parties, Journey shall have the primary right and responsibility to prepare, file, prosecute (including any opt-in or out-out decisions under the Unified Patent Court Agreement and related regulations) and/or maintain the Product Patents and Journey Patents. Within thirty (30) days of the Effective Date, DRL will provide Journey's designated outside counsel with power of attorney to prosecute, maintain, defend, and, if applicable, file and prosecute additional Product Patents. Journey shall bear all costs and expenses in connection with the preparation, filing, prosecution, and/or maintenance of any Product Patents and Journey Patents. Prior to the Transfer Date, Journey shall use outside counsel reasonably acceptable to DRL to prepare, file, prosecute, defend, and/or maintain the Product Patents and Journey Patents. After the Transfer Date, Journey will have the right to prepare, file, prosecute, maintain, and/or defend Product Patents and Journey Patents using any counsel it chooses. If Journey decides not to prepare, file, prosecute, defend, and/or maintain a Product Patent or Journey Patent in any country or other jurisdiction, Journey shall provide reasonable prior written notice to DRL of such decision. DRL shall thereupon have the option, in its sole discretion, to assume the control and direction of the preparation, filing, prosecution, and/or maintenance of such Product Patent or Journey Patent at DRL's expense in such country or other jurisdiction, except that if the Patent that DRL assumes control of is or subsequently becomes an issued patent containing one or more claims that Cover Products Commercialized by Journey then Journey will reimburse DRL for its expenses in preparing, filing, prosecuting, defending, and/or maintaining such Patent. Journey shall reasonably cooperate with DRL in such country or other jurisdiction as provided under Section 8.6(a).

(b) DRL Background Patents. As between the Parties, DRL shall have the sole right, but not the obligation, to prepare, file, prosecute (including any opt-in or out-out decisions under the Unified Patent Court Agreement and related regulations) and maintain DRL Background Patents. DRL shall bear all costs and expenses in connection with the preparation, filing, prosecution, and/or maintenance of any DRL Background Patents that do not solely and exclusively relate to the Product. Journey shall

bear all costs and expenses in connection with the preparation, filing, prosecution, and/or maintenance of any DRL Background Patent that solely and exclusively relates to the Products. If DRL decides not to prepare, file, prosecute, defend, and/or maintain a DRL Background Patent that Journey has borne costs for under this Section 8.6(b), DRL shall provide reasonable prior written notice to Journey of such decision. Provided that DRL has provided written notice to Journey that, in its good faith sole discretion, it does not have any obligations to any Third Party with respect to any DRL Background Patent, Journey shall thereupon have the option, in its sole discretion, to assume the control and direction of the preparation, filing, prosecution, and/or maintenance of such DRL Background Patent at Journey's expense in such country or other jurisdiction. DRL shall reasonably cooperate with Journey in such country or other jurisdiction as provided under this Section 8.6(b)

(c) Cooperation. The Parties agree to cooperate fully in the preparation, filing, prosecution, and/or maintenance of the Product Patents and Journey Patents under this Agreement. Such cooperation shall include:

(i) executing all papers and instruments, or requiring its employees or contractors to execute such papers and instruments, so as to (A) effectuate the ownership of intellectual property consistent with the terms and conditions of this Agreement; (B) enable the other Party to apply for and to prosecute Patent applications in the Territory or DRL Territory, as applicable; and (C) obtain and maintain any patent term extensions, supplementary protection certificates, and the like with respect to such Patents in the Territory or DRL Territory, as applicable, in each case ((A), (B), and (C)) to the extent provided for in this Agreement;

(ii) promptly informing the other Party of any matters coming to such Party's attention that may materially affect the preparation, filing, prosecution, defense, and/or maintenance of any DRL Background Patents, Product Patents, and/or Journey Patents in the Territory or DRL Territory, as applicable; and

(iii) cooperating in the submission of information concerning this Agreement as a joint research agreement for purposes of U.S. patent law and for otherwise addressing any double patenting rejections, issues, and/or allegations that arise under U.S. law in connection with a Product Patent or Journey Patent.

(d) Patent Term Extensions and Patent Listings. Journey shall be responsible for making decisions regarding patent term extensions, supplementary patent protection certificates and any other extensions that are now or become available in the future, wherever applicable, for any and all Product Patents and Journey Patents. Journey shall have the sole right to make all filings with Regulatory Authorities in the Territory with respect to all Product Patents and Journey Patents, including as required or allowed (i) in the United States, in the FDA's Orange Book, and (ii) outside the United States, under the national implementations of Article 10.1(a)(iii) of Directive 2001/EC/83 or other international equivalents, provided that DRL will make any necessary Orange Book listing-related submission required to be submitted under Applicable Law prior to the Transfer Date based on reasonable agreement with Journey concerning any such Orange Book listing-related submission.

8.7 Review and Disclosure of Patent Filings. Journey will keep DRL reasonably informed of material steps with regard to (i) the Product Patents and any DRL Background Patents for which Journey has exercised its step-in rights pursuant to Section 8.6(b), and (ii) United States patent applications, Patent Cooperation Treaty patent applications, and/or other patent applications filed in any other country to be filed under this Agreement in the Journey Patents, (in each case (i) and (ii)) or the Exploitation thereof, including by providing DRL with a copy of any material communications to and from any patent authority regarding such Product Patents, DRL Background Patents and/or such patent applications to be filed, and by providing DRL with drafts of any proposed and/or actual material filings or responses to be made to such patent authorities sufficiently in advance of submitting such filings or responses so as to allow for a reasonable opportunity for DRL to review and comment thereon. Journey shall consider in good faith the requests and suggestions of DRL with respect to such drafts and communications. Journey shall promptly disclose to DRL any United States patent applications, Patent Cooperation Treaty patent applications and/or other patent applications filed in any other country filed under this Agreement in the Journey Patents and use reasonable efforts to ensure DRL receives such disclosure(s) in no more than thirty (30) days from any such filing. Prior to the Transfer Date, Journey will not abandon any Product Patents or Journey Patents without DRL's written consent (provided that the abandonment of the application where a continuation, divisional, or similar continuing application is filed will not be considered an abandonment) and will use its best reasonable efforts to maximize the Coverage of the Product by the Product Patents and Journey Patents, and to not otherwise impair or limit such Patents. Neither Journey nor its counsel will have any attorney-client relationship with DRL or its Affiliates or owe any fiduciary or any other obligation related to the prosecution, maintenance, and defense of the Product Patents or Journey Patents. After the Transfer Date, the Parties will continue to reasonably communicate regarding the status of the Product Patents and Journey Patents, whenever reasonably requested by a Party, at no cost to the other Party.

8.8 Patent and Know-How Enforcement in the Territory

(a) Notification. If either Party becomes aware of any existing or threatened infringement or misappropriation of any of Product IP, Journey Improvements, and/or DRL Background IP by a Third Party with respect to the Products (including any generic version

thereof) or the Exploitation thereof in the Territory or DRL Territory ("**Infringement**"), then such Party shall promptly notify the other Party in writing to that effect. For the avoidance of doubt, the term "Infringement" includes any counterclaims alleging that a Product Patent, Journey Patent, and/or DRL Background Patent is invalid or unenforceable or that a product or process does not infringe or misappropriate Product IP, Journey Improvements and/or DRL Background IP, as applicable.

(b) Enforcement Rights and Privilege. For any Infringement, each Party shall share with the other Party all non-privileged information available to it regarding such actual or alleged infringement. In the event that the Parties explicitly agree to consider disclosing potentially privileged information relating to Infringement, other activities relating to Journey Improvements, Product IP, and/or DRL Background IP, the Parties will only do so where both Parties reasonably believe that the facts and circumstances support the finding that they have a common interest/joint privilege in the subject matter related to such disclosure sufficient to reasonably maintain such privilege. Upon request of either Party, the Parties will negotiate and execute a Commercially Reasonable common interest agreement relating to such disclosures.

(i) Enforcement Rights prior to Transfer Date.

(A) As between the Parties, prior to the Transfer Date, with respect to the Product IP, DRL will have the first right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in such Infringement; provided that Journey shall bear all reasonable and documented out-of-pocket costs incurred by DRL in connection with enforcing its rights against such Infringement in the Territory that substantially conform to a budget that is subject to Journey's reasonable prior approval. If, prior to the Transfer Date, DRL fails to commence enforcement of any Product IP against an Infringement in the Territory within a period of twenty five (25) days after either Party has delivered a notice of Infringement, then Journey may commence a suit or take action in the Territory to enforce such Product IP against such Infringement at Journey's sole cost and expense, and DRL shall take appropriate actions to enable Journey to commence such suit or take such actions (including allowing Journey to name DRL as a Party to any litigation related to such Infringement if reasonably required for purposes of standing or otherwise).

(B) As between the Parties, prior to the Transfer Date, with respect to any Journey Improvements, Journey will have the first right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in such Infringement, and DRL shall take appropriate actions to enable Journey to commence such suit or take such actions. If, prior to the Transfer Date, Journey fails to commence enforcement of any Journey Improvements against an Infringement in the DRL Territory within a period of twenty five (25) days after a request from DRL to do so, then DRL may commence a suit or

take action in the DRL Territory to enforce such Journey Improvements against such Infringement at its sole cost and expense, and Journey shall take appropriate actions to enable DRL to commence such suit or take such actions (including allowing Journey to name DRL as a Party to any litigation related to such Infringement if reasonably required for purposes of standing or otherwise).

(C) As between the Parties, prior to the Transfer Date, with respect to the DRL Background IP, DRL will have the first right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in such Infringement; provided that Journey shall bear all reasonable and documented out-of-pocket costs incurred by DRL in connection with enforcing its rights against such Infringement in the Territory and substantially conforming to a budget subject to Journey's reasonable prior approval. Provided that DRL has provided written notice to Journey that, in its good faith sole discretion, it does not have any obligations to any Third Party with respect to any DRL Background Patent, if, prior to the Transfer Date, DRL fails to commence enforcement of any DRL Background Patent against an Infringement in the Territory within a period of twenty five (25) days after either Party has delivered a notice of Infringement, then Journey may commence a suit or take action in the Territory to enforce such DRL Background Patent against such Infringement at Journey's sole cost and expense, and DRL shall take appropriate actions to enable Journey to commence such suit or take such actions (including allowing Journey to name DRL as a Party to any litigation related to such Infringement if reasonably required for purposes of standing or otherwise); provided that Journey shall keep DRL reasonably informed with regard to such Infringement, including by providing DRL with a copy of material documentation relating to such Infringement. Journey shall incorporate the reasonable requests and suggestions of DRL with respect to such Infringement.

(ii) Enforcement Rights after Transfer Date.

(A) On and after the Transfer Date with respect to the DRL Background IP, DRL will have the sole right, but not the obligation, to bring an appropriate suit or other action against any Person engaged in Infringement; provided that Journey shall bear all reasonable and documented out-of-pocket costs incurred by DRL in connection with enforcing its rights against such Infringement in the Territory and substantially conforming to a budget subject to Journey's reasonable prior approval. Provided that DRL has provided written notice to Journey that, in its good faith sole discretion, it does not have any obligations to any Third Party with respect to any DRL Background Patent, if, after the Transfer Date, DRL fails to commence enforcement of any DRL Background Patent against an Infringement in the Territory within a period of twenty five (25) days after either Party has delivered a notice of Infringement, then Journey may commence a suit or take action in the Territory to enforce such DRL Background Patent against such Infringement at Journey's sole cost and expense, and DRL shall take appropriate actions to enable Journey to commence such suit or take such actions (including allowing Journey to name DRL as a Party to any litigation related to such Infringement if reasonably required for purposes of standing or otherwise); provided that Journey shall keep DRL reasonably informed with regard to such Infringement, including by providing DRL with a copy of material documentation relating to such Infringement. Journey shall incorporate the reasonable requests and suggestions of DRL with respect to such Infringement.

(B) As between the Parties, on and after the Transfer Date, with respect to the Product IP and/or Journey Improvements, Journey will have the first right to bring a suit or other action against any Person engaged in Infringement and Journey will be responsible for all costs associated with any such suit or other action. If, on and after the Transfer Date, Journey fails to commence enforcement of the Product IP and/or Journey Improvements against an Infringement within twenty five (25) days following a request from DRL to do so, then DRL may commence a suit or take action to enforce such Product IP and/or Journey Improvements against such Infringement, and Journey shall take appropriate actions to enable DRL to commence such suit or take such actions; provided that Journey shall bear all reasonable and documented out-of-pocket costs incurred by DRL in connection with enforcing its rights against such Infringement in the Territory.

(C) **Settlement and Recovery**. Neither Party will settle any claim, suit, or action that it brought under this Section 8.8 with respect to Product IP and/or Journey Improvements in any manner that (1) imposes any costs or liability on, or involves any admission by, the other Party, or (2) materially limits the scope, enforceability, patentability, or term of the Product IP and/or Journey Improvements without the other Party's written approval, which approval will not be unreasonably withheld, conditioned, and/or delayed. For clarity, Journey shall not have any right to settle any claim, suit, or action with respect to DRL Background IP. Any and all recoveries obtained by a Party will first be allocated first to the reimbursement of any expenses incurred by the Parties in connection with such claim, suit, or action. Thereafter, to the extent that any remaining recoveries are directly based on lost profits on sales of a Product any such lost profits will be treated as Net Sales of a Product. All other recoveries will be retained by the Party that obtained such recoveries from the claim, suit, or action.

(iii) Cooperation in Enforcement. Each Party shall provide to a Party enforcing intellectual property rights against Infringement in the Territory any reasonable assistance in such enforcement, at such enforcing Party's request and expense, including joining such action as a party plaintiff if required by Applicable Law to pursue such a suit or other action.

(iv) Rights of a Party with the First Right of Enforcement when It Elects Not to Enforce to Stop Infringement in the Territory. In any suit or other action under this Section in which the Party with the first right to initiate suit or other action (the "Non-Enforcing Party") has not instituted a suit or other action to stop Infringement in the Territory, the enforcing Party shall (X) keep the Non-Enforcing Party regularly informed of the status and progress of such enforcement efforts, and (Y) reasonably consider the Non-Enforcing Party's comments on any such enforcement efforts. The Non-Enforcing Party in such suits or actions may obtain separate representation in such matter by counsel of its own choice and at its own cost and expense, but such Non-Enforcing Party shall at all times cooperate fully with the enforcing Party. The enforcing Party bringing any such suit or other action will be entitled to all recoveries arising from such suit or other action.

8.9 Infringement of Third Party Claim.

(a) If the Product becomes the subject of a Third Party's claim or assertion of infringement of a Patent (each such claim or assertion, a "**Third Party Infringement Claim**") granted by a jurisdiction within the Territory, then Journey shall have the sole right and responsibility to resolve such Third Party Infringement Claim at its sole cost and expense. DRL shall reasonably assist Journey in such defense if requested by Journey, at Journey's sole cost and expense.

(b) Journey shall keep DRL reasonably informed with respect to the defense and settlement of Third Party Infringement Claims pursuant to this Section 8.9.

8.10 Invoices. In the event that a Party is entitled to reimbursement of costs and expenses pursuant to thisARTICLE 8 (and such costs and expenses are not DRL Development Costs, which shall be invoiced and paid in accordance with Section 4.2(g)), the Party entitled to reimbursement shall invoice the other Party for all such costs and expenses along with suitable documentation evidencing each such cost and expense and such other Party shall pay all undisputed costs and expenses within thirty (30) calendar days of receipt of an applicable invoice.

8.11 Trademarks. Except as otherwise set forth in this Agreement, no rights to any trademarks or trade dress are granted in this Agreement. Journey shall have the right to determine all Product Trademarks to be used with respect to the Exploitation of the Products in the Territory and DRL shall have the sole right to determine DRL Territory Trademarks to be used with respect to the Exploitation of the Product in the DRL Territory. Each Party will present proposed Trademarks for the Product for use in the Territory or DRL Territory for the Product, as applicable. Each Party will ensure that any Trademarks used by such Party are not reasonably likely to be considered confusingly similar to any Trademarks that are already in commercial use by the other Party or for which such other Party has filed a Trademark application or registration. If a Trademark for the Product of a Party is reasonably likely to be considered confusingly similar to a Trademark for the Product of the other Party that is already in use by such other Party or such other Party has already filed a Trademark application or registration, such non-using Party (or the Party that does not own the filed Trademark application or registration) shall not proceed with the use of such Trademark.

8.12 Domain Names. Journey may, at its cost, register as domain names the Product Trademarks in any country or other jurisdiction in the Territory using any available generic top-level domain or country-code top-level domain. DRL may, at its cost, register as domain names the DRL Territory Trademarks in the DRL Territory using the country-code top-level domain. Neither Party will actively use any web site associated with a domain name that incorporates a Trademark of the other Party, its Affiliates, or sublicensees, that is associated with Products.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES; COVENANTS

9.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party as follows, as of the Effective Date:

(a) Corporate Existence. It is a company or corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it was incorporated or formed;

(b) Corporate Power. It has the corporate power and authority and the legal right to enter into this Agreement and perform its obligations hereunder;

(c) Authority. It has taken all necessary corporate action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder;

(d) Binding Agreement. This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms, subject to enforcement of remedies under applicable bankruptcy, insolvency, reorganization, moratorium, and/or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;

(e) Good Faith and Fair Dealing. Nothing in this Agreement shall be deemed a waiver of the implied duty of good faith and fair dealing under Applicable Law;

(f) No Conflict. The execution and delivery of this Agreement, the performance of such Party's obligations hereunder, and the rights, licenses, and sublicenses to be granted pursuant to this Agreement (i) do not and will not conflict with or violate any requirement of Applicable Law; (ii) do not and will not conflict with or violate the certificate of incorporation, by-laws, and/or other organizational documents of such Party; and (iii) do not and will not conflict with, violate, breach, and/or constitute a default under any contractual obligations of such Party or any of its Affiliates;

(g) No Consents. No authorization, consent, and/or approval of a Third Party, nor any license, permit, exemption of or filing or registration with or notification to any court or Governmental Authority is or will be necessary for the (i) valid execution, delivery, and/or performance of this Agreement by either Party; or (ii) the consummation by each Party of the transactions contemplated hereby;

(h) Other Rights. Neither Party nor any of their respective Affiliates is a party to or otherwise bound by any oral or written contract or agreement that will result in any Third Party obtaining any interest in, or that would give to any other person any right to assert any claim in or with respect to, any of such Party's rights under this Agreement; and

(i) No Debarment. None of such Party's employees, consultants, and/or contractors:

(i) is debarred under Section 306(a) or 306(b) of the FD&C Act and/or by the analogous laws of any Regulatory Authority;

(ii) has, to such Party's knowledge, been charged with, or convicted of, any felony or misdemeanor within the ambit of 42 U.S.C. §§1320a-7(a), 1320a-7(b)(l)-(3), or pursuant to the analogous laws of any Regulatory Authority, and/or is proposed for exclusion, or the subject of exclusion or debarment proceedings by a Regulatory Authority; and

(iii) is excluded, suspended, and/or debarred from participation, or otherwise ineligible to participate, in any U.S. or non-U.S. healthcare programs (or has been convicted of a criminal offense that falls within the scope of 42 U.S.C. §1320a-7 but not yet excluded, debarred, suspended, and/or otherwise declared ineligible), or excluded, suspended, and/or debarred by a Regulatory Authority from participation, or otherwise ineligible to participate, in any procurement or non-procurement programs.

9.2 Fundamental Representations and Warranties of DRL. DRL represents warrants to Journey, the following, as of the Effective Date (collectively, the "**Fundamental Representations and Warranties**"):

(a) Title; Encumbrances. (i) DRL is the sole and exclusive owner of the entire right, title and interest in the Product Patents, the Product Know-How, and the Product Regulatory Materials; (ii) to DRL's Knowledge, no Third Party has taken any action or threatened to take any action before any patent or trademark office (or court or other Governmental Authority) that would render any of the Product IP invalid, unpatentable, or unenforceable, or that would change the ownership of any Product Patents (including changing the inventorship of any Product Patents to an inventor not currently named in any Product Patents); (iii) DRL is entitled to grant the licenses and to make the assignments, conveyances, sales, and transfers specified herein; (iv) DRL holds the Product Patents and Product Regulatory Materials free and clear from any Encumbrances, and (v) DRL has not granted any licenses or other rights to any Third Party that include any of the Assigned Assets, or taken any other actions inconsistent with the grants of rights to Journey in this Agreement;

(b) Completeness of the Product Patents. The Product Patents are the only Patents Controlled by DRL or its Affiliates in the Territory that contain claims that Cover the Products; and

(c) **No Grant of Rights to Third Parties.** Neither DRL nor any of its Affiliates has granted any rights with respect to the Assigned Assets (including by granting any covenant not to sue with respect to the Product IP);

9.3 **Additional Representations and Warranties of DRL.** DRL additionally represents warrants to Journey, the following, as of the Effective Date:

(a) **No Infringement or Misappropriation**. DRL has not received any written notice from any Third Party asserting or alleging and to DRL's Knowledge no Third Party has otherwise asserted or alleged that (i) any Exploitation of the Product by DRL before the Effective Date infringed or misappropriated the intellectual property rights of a Third Party in the Territory, or (ii) any Manufacturing and/or Commercialization of the Product in the Territory after issuance of a Regulatory Approval by FDA would infringe or misappropriate the intellectual property rights of any Third Party;

(b) **Prosecution and Maintenance of Product Patents**. To DRL's Knowledge, the Product Patents have been diligently prosecuted in accordance with Applicable Law in the respective patent offices in the Territory in which such Patents have been filed;

(c) **Patent Disclosures**. DRL has accurately and completely disclosed to the US Patent and Trademark Office all references or other evidence material to patentability under Applicable Law, of which DRL has Knowledge;

(d) **IP Invalidity, Unenforceability, or Unpatentability Claim**s. No Third Party, except a patent examiner and/or patent office in the ordinary course of patent prosecution, has alleged either in writing or to DRL's Knowledge otherwise that any Product Patent is invalid, unpatentable, and/or unenforceable;

(e) **Inventors**. To DRL's Knowledge, each of the Patents listed on **Exhibit D** properly identifies each and every inventor of the claims thereof as determined in accordance with the laws of the jurisdiction in which such Patent is issued, or such application is pending;

(f) **Infringement by Third Parties**. To DRL's Knowledge, no Person is infringing and/or misappropriating or threatening to infringe or misappropriate the Product IP;

(g) **No Unauthorized Use**. Neither DRL nor any of its Affiliates has received any written notice of or, to DRL's Knowledge, is otherwise aware of any actual or threatened unauthorized use, infringement, or misappropriation by any Person, including any current or former employee or consultant of DRL or any of its Affiliates, of the Product IP or the Product;

(h) **No Undisclosed Material Obligations**. To DRL's Knowledge, DRL has in good faith disclosed to Journey all current material Obligations with respect to the Assigned Assets that exist as of the Effective Date (for the avoidance of doubt, DRL has no obligation under this representation and warranty to disclose to Journey any anticipated Obligations, including any such Obligation that Journey may incur after the Effective Date in Exploiting the Products that are not specific to the Assigned Assets, such as any general risks relating to failure in conducting Clinical Studies, prosecuting and enforcing Patents, and similar risks that generally arise in the ordinary course of Developing and otherwise Exploiting pharmaceutical products);

(i) **Development Cost Estimate and Estimated Budget.** To DRL's Knowledge and taking into account (i) the costs estimates submitted by Third Parties, (ii) the "Notes and Assumptions" set forth in the Draft Development Plan, and (iii) any other factors over which DRL has no control, the costs in the estimated budget in the Draft Development Plan reflect DRL's good faith estimate of the Development Costs that would reasonably be incurred by DRL in its performance of the Draft Development Plan, in the manner that DRL would reasonably perform the Draft Development Plan in the absence of this Agreement;

(j) **Compliance with Laws; Good Practices**. To DRL's Knowledge, DRL's Development and Manufacture of the Products and development of the Assigned Assets has been carried out in accordance with all Applicable Laws in all material respects, including GLP, GCP and GMP;

(k) **Safety Issues**. To DRL's Knowledge, there are no material safety issues, including any facts, data, findings, analysis, information, or belief that there is a substantial risk of Products Exploited by DRL prior to the Effective Date posing a risk to patient health or safety; and

(l) **Regulatory and Development Records**. DRL has disclosed true, accurate, and complete copies of all material Regulatory Materials, and any documents and/or other records in Product Know-How that are material to Development, Manufacture, Commercialization, and/or Exploitation of the Product to Journey, including all material chemistry, manufacturing, and control (CMC) records.

9.4 **Additional Representations and Warranties of Journey.** Journey represents warrants to DRL, the following, as of the Effective Date:

(a) Journey has been provided all opportunity to review the Draft Development Plan and to ask of DRL any questions, and request any further information, related to the Development of the Product.

(b) Prior to the Effective Date, Journey has provided DRL with unaudited financial statements that are true, accurate and complete in all material respects and fairly present in all material respects the financial condition of Journey as of the quarter ended March 31, 2021 and the year ended December 31, 2020.

9.5 **Additional Specific Covenants.**

(a) **No Debarment**. In the course of the Development, Manufacturing, and/or Commercialization of the Product, neither Party nor their respective Affiliates (and, as it relates to Journey, any Sublicensees) shall use any employee, consultant, or other contractor:

(i) who has been debarred under Section 306(a) or 306(b) of the FD&C Act or pursuant to the analogous Applicable Laws of any Regulatory Authority;

(ii) who, to such Party's knowledge, has been charged with, and/or convicted of, any felony or misdemeanor within the ambit of 42 U.S.C. §§1320a-7(a), 1320a-7(b)(l)-(3), or otherwise pursuant to the analogous laws of any Regulatory Authority, or is proposed for exclusion, or the subject of exclusion or debarment proceedings by a Regulatory Authority, during the employee's or consultant's employment or contract term with such Party; and/or

(iii) who is excluded, suspended, and/or debarred from participation, and/or otherwise ineligible to participate, in any U.S. or non-U.S. healthcare programs (or who has been convicted of a criminal offense that falls within the scope of 42 U.S.C. §1320a-7 but has not yet been excluded, debarred, suspended or otherwise declared ineligible), and/or excluded, suspended or debarred by a Regulatory Authority from participation, and/or otherwise ineligible to participate, in any procurement or non-procurement programs.

(b) **Notice**. Each Party shall notify the other Party promptly, but in no event later than three (3) Business Days, upon becoming aware that any of its employees, consultants, and/or contractors has been excluded, debarred, suspended, and/or is otherwise ineligible, and/or is the subject of exclusion, debarment, and/or suspension proceedings by any Regulatory Authority.

(c) **No Violation**. Neither Party nor any of its Affiliates will enter into any obligation to any Person, contractual or otherwise, that, by its terms, directly conflicts with and/or is inconsistent with in any material respect of the terms of this Agreement and/or would materially impede the fulfillment of such Party's obligations hereunder.

(d) **Healthcare, Anti-Bribery and Anti-Corruption Compliance.**

(i) Each Party shall perform and shall cause all of its employees and agents to perform, its obligations under this Agreement in full compliance with all Healthcare Laws and Anti-Corruption Laws.

(ii) Each Party shall not, in connection with the performance of its obligations under this Agreement, (A) make or submit any claim, bill, and/or other document seeking payment from Medicare, Medicaid, and/or any similar governmental program, constituting a false claim, as defined by the Federal False Claims Act, and all such claims, bills or other documents shall comply with all applicable billing and service requirements, (B) be party to any unlawful contract, lease, agreement, joint venture, and/or other arrangement with any health system, hospital, ambulatory surgery center, and/or other health care facility, physician, or other healthcare provider, and/or immediate family member thereof, and/or other Person who is in a position to make or influence referrals to or otherwise generate business for such Party, except in compliance in all material respects with all Applicable Laws, and/or (C) pay any remuneration, in cash or in kind, to any physician or provider except in accordance with the express terms of such physician or provider's written agreement with such Party and/or any Affiliate thereof.

(iii) Each Party, on behalf of itself, its officers, directors, and employees and on behalf of its Affiliates, agents, representatives, consultants, and subcontractors hired in connection with the subject matter of this Agreement (together with such Party and with respect to each Party, "**Party Representatives**") agrees that in connection with the performance of its obligations hereunder, the Party Representatives shall not directly or indirectly pay, offer or promise to pay, and/or authorize the payment of any money, or give, offer, and/or promise to give, and/or authorize the giving of anything else of value, to:

(A) any Government Official in order to influence official action;

(B) any Government Official (1) to influence such Person to act in breach of a duty of good faith, impartiality, and/or trust ("**acting improperly**"), (2) to reward such Person for acting improperly, and/or (3) where such Person would be acting improperly by receiving the money or other thing of value;

(C) any political party, official of a political party, and/or candidate unless authorized under Applicable Law;

(D) any other Person while knowing or having reason to believe that all or any portion of the money or other thing of value will be paid, offered, promised, and/or given to, or will otherwise benefit, a Government Official or political party, official of a political party, and/or candidate in order to influence official action for or against either Party in connection with the matters that are the subject of this Agreement; and/or

(E) any other Person in a corrupt or improper effort to obtain or retain business or any commercial advantage, such as receiving a permit or license.

(iv) In connection with performing its obligations under this Agreement, each Party Representative shall not, directly or indirectly, solicit, receive, and/or agree to accept any payment of money or anything else of value that constitutes an Anti-Corruption Law Violation.

(v) Each Party will, and will cause its Party Representatives to, keep and maintain accurate books and reasonably detailed records reasonably required to establish compliance with Sections 9.1(i)(iii), 9.5(d)(i), and 9.5(d)(iv) during the Term and for a period of three (3) years thereafter.

(vi) Each Party will, and will cause all Persons acting on its behalf to, comply with the Healthcare Laws and Anti-Corruption Laws in connection with all work under this Agreement and each Party shall be responsible for any breach of any representation, warranty, covenant, or undertaking in this Section 9.4(d), or of the Healthcare Laws or Anti-Corruption Laws by any of its Party Representatives.

(vii) Each Party may disclose applicable terms and conditions of this Agreement or any action taken under this Section 9.4(d) to prevent a potential violation or address a continuing violation of applicable Healthcare Law or Anti-Corruption Laws solely as set forth with Section 11.2.

9.6 **Non-Competition.** During any portion of the Term of this Agreement following the Transfer Date:

(a) DRL will not, directly or indirectly, Commercialize, or aid, solicit, or otherwise cause any Person to Commercialize, in the Territory, Products or any other product containing minocycline or any salt of minocycline as the active pharmaceutical ingredient and that (i) has the same dosage strength (equal to or greater than 10 mg and less than or equal to 40 mg) and route and mode of administration (which is oral solid) as the Products and/or (ii) is approved by a Regulatory Authority in the Territory for the treatment of any aspect of rosacea ("**Competing Product**"); and

(b) Journey will not, directly or indirectly, Commercialize, or aid, solicit, or otherwise cause any Person to Commercialize, in the DRL Territory, the Products or any Competing Products.

9.7 **No Parallel Importation.** DRL, its Affiliates, and sublicensees will not engage in any activity that would lead to importation of the Product from the DRL Territory into the Territory, nor will DRL, its Affiliates, and sublicensees assist any Third Party to import Products from the DRL Territory into the Territory except in connection with any Development permitted under this Agreement. Journey, its Affiliates, and Sublicensees will not engage in any activity that would lead to importation of Products from the Territory into the DRL Territory, nor will Journey, its Affiliates, and Sublicensees assist any Third Party to import Products from the Territory into the DRL Territory except in connection with any Development permitted under this Agreement.

9.8 **No Other Representations or Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, AND OTHER THAN IN CIRCUMSTANCES CONSTITUTING FRAUD, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF A PARTY, AND ALL SUCH ADDITIONAL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

ARTICLE 10
INDEMNIFICATION

10.1 Survival of Representations, Warranties and Covenants. The representations, warranties, and covenants of DRL contained in this Agreement and all claims with respect thereto shall survive for a period of [***] months from the Effective Date; except that (a) the covenants set forth in ARTICLE 4 shall survive until the Transfer Date, (b) the Fundamental Representations and Warranties shall survive for a period of [***] years from the Effective Date; (c) the representations and warranties set forth in Section 9.1 shall survive until the expiration of the applicable statute of limitations, and (d) the representations, warranties, and/or covenants set forth in ARTICLE 6, ARTICLE 8, Section 9.6 and 9.7 and ARTICLE 11, shall survive until this Agreement expires or is terminated or as set forth in Section 12.11, whichever is longer. Any right of indemnification pursuant to this ARTICLE 10 with respect to a claimed breach of a representation, warranty or covenant shall expire at the date of termination of the representation, warranty, or covenant claimed to be breached.

10.2 Indemnification by DRL. DRL shall, at its sole expense, defend, indemnify, and hold Journey, its Affiliates, and their respective officers, directors, employees and agents (the "**Journey Indemnitees**") harmless from and against any and all damages, losses, liabilities, taxes, costs, expenses (including court costs and reasonable attorneys' fees and expenses) and recoveries (collectively, "**Losses**") arising from claims, suits, and/or proceedings brought by Third Parties (collectively, "**Claims**") arising out of, based on, and/or resulting from (a) the material breach of any of DRL's obligations under this Agreement, including DRL's representations, warranties, and/or covenants hereunder, (b) the Commercialization of the Products by or on behalf of DRL in the DRL Territory, or (c) the willful misconduct and/or grossly negligent acts of DRL or any DRL Indemnitee. The foregoing indemnity obligation will not apply (i) to the extent that such Claims or Losses arise out of or result from the fraud, gross negligence, and/or willful misconduct of a Journey Indemnitee, and/or any related breach by Journey of its representations, warranties, and/or covenants hereunder; and/or (ii) to Claims or Losses for which DRL has an obligation to indemnify Journey pursuant to Section 10.3, as to which Claims or Losses each Party shall indemnify the other to the extent of its respective liability for such Claims or Losses.

10.3 Indemnification by Journey. Journey shall, at its sole expense, defend, indemnify and hold DRL and its Affiliates and their respective officers, directors, employees, and agents (the "**DRL Indemnitees**") harmless from and against any and all Losses arising from Claims to the extent that such Claims arise out of, are based on, and/or result from (a) the material breach of any of Journey's obligations under this Agreement, including Journey's representations and warranties, and/or covenants, (b) the willful misconduct and/or grossly negligent acts of Journey or any Journey Indemnitee, (c) any acts or omissions of Journey (or its designee) and/or its Affiliates and Journey's and/or its Affiliates' respective Sublicensees, or its Acquiror, while acting as DRL's "regulatory agent" in accordance with Section 4.1(a)(iv), (d) the Development of the Products by or on behalf of Journey and/or its Affiliates and Journey's and/or its Affiliates' respective Sublicensees, or its Acquiror, (e) the Assumed Liabilities, and (f) the Exploitation of the Products in the Territory by or on behalf (including by Third Party Suppliers) of Journey or its Affiliates, its or their respective Sublicensees, or its Acquiror. The foregoing indemnity obligation will not apply (i) to the extent that such Claims or Losses arise out of or result from the fraud, gross negligence, and/or willful misconduct of DRL or its Affiliates, and/or any related breach by DRL of its representations, warranties, and/or covenants hereunder; and/or (ii) to Claims or Losses for which DRL has an obligation to indemnify Journey pursuant to Section 10.1, as to which Claims or Losses each Party shall indemnify the other to the extent of its respective liability for such Claims or Losses.

10.4 Indemnification Procedures. The Party claiming indemnity under this ARTICLE 10 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly after learning of such Claim or Loss; provide that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation hereunder unless (and then only to the extent that) the Indemnifying Party is prejudiced thereby. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's sole cost and expense, in connection with the defense of a Claim for which indemnification is being sought. The Indemnified Party may participate in and monitor such defense with counsel of its own choosing at its sole cost and expense. The Indemnifying Party shall not settle any Claim without the prior written consent of the Indemnified Party, not to be unreasonably conditioned, withheld, and/or delayed, unless the settlement involves only the payment of money and includes a complete release of claims for the Indemnified Party. If the Indemnifying Party is actively defending the Claim in good faith, the Indemnified Party shall not settle or compromise any such Claim without the prior written consent of the Indemnifying Party. If the Indemnifying Party does not assume and conduct the defense of the Claim within thirty (30) days after receipt of written notice thereof from the Indemnified Party, then (a) the Indemnified Party may defend against, consent to the entry of any judgment, or enter into any settlement with respect to such Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, but will obtain any consent (not to be unreasonably withheld) from, the Indemnifying Party in connection therewith) and (b) the Indemnifying Party will remain responsible to indemnify the Indemnified Party as provided in this ARTICLE 10.

10.5 Limitation of Liability.

(a) Exclusion of Certain Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES ARISING FROM OR RELATING TO THIS AGREEMENT, WHETHER ARISING FROM A DIRECT CLAIM OR THIRD PARTY CLAIM, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES OR WHETHER SUCH PARTY SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING FOR ANY SUCH LOST PROFITS, LOST REVENUE, OR LOST BUSINESS, EXCEPT FOR (I) BREACHES OF A PARTY'S OBLIGATIONS UNDER SECTIONS 4.1(a)(iv), 4.3(c) (SOLELY WITH RESPECT TO THE OBLIGATIONS OF DRL UNDER SECTION 4.3(c) WITHIN DRL'S REASONABLE CONTROL), 5.1, 6.3 (WITH RESPECT TO 6.3(b)-(c), SOLELY WITH RESPECT TO CONDUCT BY DRL AND/OR ITS AFFILIATES), 9.1, 9.2, 9.3, 9.4, 9.5, 9.6(a) (SOLELY WITH RESPECT TO CONDUCT BY DRL), 9.6(b) (SOLELY WITH RESPECT TO CONDUCT BY JOURNEY AND/OR ITS AFFILIATES), 9.7 (SOLELY WITH RESPECT TO CONDUCT BY DRL AND/OR ITS AFFILIATES), AND ARTICLE 11, (II) ANY SUCH DAMAGES ARISING IN CONNECTION WITH A PARTY'S OBLIGATIONS UNDER SECTIONS 10.2 AND 10.3, RESPECTIVELY.

(b) Basket and Cap. IN NO EVENT SHALL DRL BE LIABLE TO JOURNEY FOR ANY LOSSES RELATING TO THIS AGREEMENT, WHETHER ARISING FROM A DIRECT CLAIM OR THIRD PARTY CLAIM, (i) UNTIL SUCH LOSSES EXCEED [***] ($[***]) (AND THEN JOURNEY SHALL BE ENTITLED TO LOSSES ONLY FOR THE PORTION OF THE LOSSES THAT EXCEED SUCH AMOUNT), AND (ii) THE AMOUNT OF LOSSES THAT JOURNEY MAY CLAIM SHALL BE CAPPED AT THE FOLLOWING PERCENTAGE OF THE AMOUNTS ACTUALLY PAID TO DRL AS OF THE DATE THE EVENT GIVING RISE TO THE CLAIM AROSE: (A) UP TO [***] ([***]%) OF THE ACTUAL FTE COST PAID BY JOURNEY TO DRL FOR A CLAIM THAT DRL BREACHED ARTICLE 4 (B) [***] ([***]%) FOR A CLAIM THAT DRL BREACHED SECTION 9.1 OR SECTION 9.2, AND (C) [***] ([***]%) FOR A CLAIM THAT DRL BREACHED ANY OTHER SECTION OF THIS AGREEMENT. FOR CLARITY, ONCE JOURNEY HAS BEEN PAID BY DRL IN SATISFACTION OF A CLAIM PURSUANT TO (ii) ABOVE, JOURNEY SHALL ONLY BE ENTITLED TO THE DIFFERENCE BETWEEN DRL'S CAPPED LIABILITY FOR ANY SUBSEQUENT CLAIM AND THE AMOUNT(S) ALREADY PAID BY DRL, IF THE DIFFERENCE IS A POSITIVE NUMBER. FOR FURTHER CLARITY, THE FOREGOING LIMITATIONS SHALL NOT APPLY IN THE EVENT OF FRAUD OR FOR BREACHES OF DRL'S OBLIGATIONS UNDER SECTIONS 4.3(b), 4.3(c), 6.3, 8.11, 8.12, 9.6, 9.7, AND ARTICLE 11.

(c) NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 10.5 IS INTENDED TO LIMIT OR RESTRICT DAMAGES OR LOSSES ARISING FROM A PARTY'S FRAUD (INCLUDING INEQUITABLE CONDUCT), GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

10.6 Insurance. Each Party shall procure and maintain insurance, including product liability insurance and clinical trial insurance, or shall self-insure, in each case, in a manner adequate to cover its obligations hereunder and consistent with normal business practices of prudent pharmaceutical companies similarly situated at all times during which the Product is being clinically tested or commercially distributed or sold by or on behalf of a Party (including if reasonably requested adding the other Party as an

additional insured on such policies). Each Party shall procure insurance or self-insure at its own expense. Each Party will disclose reasonable details concerning its compliance with this Section 10.6 upon the reasonable request of the other Party. Such insurance does not create a limit of either Party's liability with respect to its indemnification obligations under this ARTICLE 10. Each Party shall provide the other Party with written evidence of such insurance or self-insurance upon request.

ARTICLE 11
CONFIDENTIALITY

11.1 Confidentiality. Each Party agrees that, during the Term and for the later of (i) a period of five (5) years thereafter or (ii) in the case of any Confidential Information that is a trade secret under Applicable Law for so long as such information maintains its status as a trade secret, it and its Affiliates shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than to exercise its rights or perform its obligations under this Agreement (which includes the exercise of any rights or the performance of any obligations hereunder or thereunder) any Confidential Information furnished to it or its Affiliate by the other Party or its Affiliate pursuant to this Agreement, except to the extent expressly authorized by this Agreement or as otherwise agreed to in writing by the Parties. Each Party shall further require its Affiliates, and to ensure its and their respective directors, officers, employees, agents, consultants, sublicensees, contractors, partners, Acquirors, assignees, and distributors (collectively, "**Recipients**") who receive the other Party's Confidential Information either agree, in writing, or are otherwise subject to legal professional ethical obligations requiring such Persons, to be bound by duties and obligations of confidentiality and non-use no less stringent than those contained in this Section 11.1. The foregoing confidentiality and non-use obligations do not apply to any portion of the disclosing Party's Confidential Information that the receiving Party can demonstrate by competent written proof maintained in the ordinary course of business:

(a) was already known to or otherwise in the possession of, the receiving Party, other than under an obligation of confidentiality, prior to the time of disclosure by the disclosing Party or its Affiliate, as evidenced by contemporaneous writing;

(b) was part of the public domain at the time of its disclosure to the receiving Party or any of its Recipients;

(c) became part of the public domain after its disclosure and other than through any act or omission of the receiving Party or any of its Recipients in breach of this Agreement;

(d) was disclosed to the receiving Party on a non-confidential basis by a Third Party who, to the receiving Party's knowledge after due inquiry, had a legal right to make such disclosure; or

(e) was independently discovered or developed by the receiving Party or its Affiliate without aid, application, reference to or use of the disclosing Party's Confidential Information, as evidenced by a contemporaneous writing.

11.2 Authorized Disclosure. Notwithstanding the obligations set forth in Section 11.1, a Party or its Affiliate may disclose the other Party's Confidential Information and the terms of this Agreement to the extent:

(a) such disclosure is reasonably necessary (i) for the filing or prosecuting of Patent rights as contemplated by this Agreement; (ii) to comply with the requirements of Regulatory Authorities with respect to obtaining and maintaining Regulatory Approval of the Product or submission of information to tax or other Governmental Authorities; or (iii) for prosecuting or defending litigation as contemplated by this Agreement (including enforcing trade secret rights in the Product Know-How);

(b) such disclosure is reasonably necessary to its officers, directors, employees, agents, consultants, contractors, licensees, sublicensees, attorneys, accountants, sources of debt or equity financing, insurers, or licensors who need to know such information in order for such Party to perform its obligations or exercise its rights under this Agreement or the Material Transfer Agreement; *provided* that in each case, the disclosees are bound by written obligations or legal professional ethical duties and obligations of confidentiality and non-use no less stringent than those of this Agreement with a reasonable duration based on customary terms;

(c) such disclosure is reasonably necessary to any *bona fide* potential or actual investor, Acquiror, merger partner, or other financial or commercial partner for the sole purpose of evaluating an actual or potential investment, acquisition, or other business relationship; *provided* that, in each case, the disclosees are bound by written obligations of confidentiality and non-use no less stringent than to those of this Agreement with a reasonable duration based on customary terms, and *further provided*, that in the case of any such disclosure of Confidential Information to any actual or potential competitor of either Party, all competitively sensitive information (including, for the avoidance of doubt, all financial information) herein shall be redacted until, subject to Applicable Laws, the execution of a definitive agreement with such actual or potential competitor to implement a transaction with the receiving Party is imminent; or

(d) such disclosure is reasonably necessary to comply with Applicable Laws, including regulations promulgated by applicable security exchanges, court order, administrative subpoena, or other order.

Notwithstanding the foregoing, if a Party or its Affiliate is required to make a disclosure of the other Party's Confidential Information pursuant to Section 11.2(a) or 11.2(d), then such disclosing Party shall (i) use its best efforts to promptly notify the other Party of such required disclosure, (ii) give the other Party an opportunity to seek confidential treatment and, upon the other Party's request, such disclosing Party and its Affiliates and their respective Recipients shall use reasonable efforts to obtain, or to assist the other Party in obtaining, a protective order and/or other protection preventing the disclosure, protecting the confidentiality of the Confidential Information, and/or limiting the required disclosure and (iii) if the other Party is unsuccessful in its efforts pursuant to subsection (ii), disclose only that portion of the Confidential Information that such Party is legally required to disclose and under conditions that maximize the confidentiality of such disclosure wherever available.

11.3 Technical Publication. The Parties acknowledge that scientific publications must be strictly monitored to prevent any adverse effect from premature publication of results of the Development activities hereunder. Accordingly, neither DRL nor any of its Affiliates or their respective contractors shall submit for publication, publish, and/or present an abstract or presentation with respect to the activities contemplated by the Development Plan (each of the foregoing, a "**Publication**") without prior review and written approval by Journey. In connection with the foregoing, Journey shall apply the same standards and guidelines to its review and approval of Publications submitted by DRL or its Affiliates that Journey applies to its review and approval of Publications submitted by any of its employees.

11.4 Publicity; Terms of Agreement.

(a) Terms of Agreement. The Parties agree that the existence and terms of this Agreement are the Confidential Information of both Parties, subject to the special authorized disclosure provisions set forth in this Section 11.4.

(b) Initial Public Announcement. Journey may make a public announcement of the execution of this Agreement, which may be issued on or promptly after

the Effective Date; provided that such public announcement is in the form attached hereto as **Exhibit G**.

(c) Subsequent Public Announcements. After release of such press release, if either Party or its Affiliates desire to make a public announcement concerning the existence or terms of this Agreement, or any clinical or regulatory announcements, then such Party shall provide a copy of the proposed text of such announcement to the other Party for its prior review and approval (except as otherwise provided), such approval not to be unreasonably withheld, conditioned, and/or delayed. A Party commenting on such a proposed announcement shall provide its comments, if any, within five (5) Business Days after receiving the announcement for review. In addition, where, in the opinion of the disclosing Party's counsel, required by Applicable Laws, including regulations promulgated by applicable security exchanges, such Party or its Affiliate may, subject to Section 11.4(d), make a public announcement, press release, and/or other public disclosure under this Agreement. Notwithstanding anything to the contrary set forth in this Agreement, Journey, its Affiliates and its and their respective Sublicensees shall have the right to publicly disclose research, development, and commercial information (including with respect to regulatory matters) regarding the Products; *provided*, that (a) such disclosure is subject to the provisions ofARTICLE 11 with respect to DRL's Confidential Information, and (b) except as required by Applicable Law, neither Party shall use the name of the other party or its Affiliates (or insignia, or any contraction, abbreviation or adaptation thereof) without the other Party's prior written permission. Neither Party nor their Affiliates are required to seek the permission of the other Party to repeat any information regarding the terms of this Agreement that has already been publicly disclosed by such Party or its Affiliate, or by the other Party or its Affiliate, in accordance with this Section 11.4, if such information remains accurate as of such time.

(d) Required Disclosures. The Parties acknowledge that either or both Parties may be obligated to file under Applicable Laws a copy of this Agreement with the United States Securities and Exchange Commission or other Governmental Authorities and that either Party may be required to disclose information concerning this Agreement or portions of this Agreement with Governmental Authorities involved in the examination or enforcement of Patent rights or Regulatory Authorities in connection with the rights granted under this Agreement. Each Party may make such a required filing and shall use reasonable efforts to request confidential treatment of the commercial terms and sensitive technical terms hereof and thereof to the extent such confidential treatment is reasonably available to such Party under Applicable Law. In the event of any such filing, each Party shall provide the other Party with a copy of this Agreement marked to show provisions for which such Party intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's comments thereon to the extent consistent with the legal requirements and provided within ten (10) Business Days after provision of such copy (or such shorter period of time as may be required to comply with Applicable Law), with respect to the filing Party, governing disclosure of material agreements and material information that must be publicly filed and/or otherwise recorded.

11.5 Prior Confidentiality Agreements. The Parties are parties to that certain confidentiality agreement between the Parties with an Effective Date of November 29, 2018 entered into by Journey and DRL's Affiliate, Promius Pharma, LLC (the " **Prior CDA**"). This Agreement, including this ARTICLE 11 shall supersede the Prior CDA and all Confidential Information disclosed pursuant to the Prior CDA shall be considered Confidential Information under this Agreement and subject to the obligations set forth in this ARTICLE 11.

11.6 Destruction of Confidential Information. Except as otherwise set forth in this Agreement, upon termination or expiration of this Agreement, the receiving Party will, at disclosing Party's option and instruction, promptly destroy all of the disclosing Party's Confidential Information in its possession, including all reproductions and copies thereof in any medium, except that the receiving Party may retain one copy for its legal files solely to monitor its continuing obligations and/or as reasonably necessary or useful to exercise its rights that expressly survive the termination or expiration of this Agreement.

11.7 Unauthorized Use. If either Party becomes aware or has knowledge of any unauthorized use and/or disclosure of the other Party's Confidential Information, then it will promptly notify the other Party of such unauthorized use and/or disclosure.

11.8 Exclusive Property. Except where otherwise provided in this Agreement, all of the disclosing Party's Confidential Information is the sole and exclusive property of the disclosing Party and the permitted use thereof by the receiving Party for purposes of its performance hereunder will not be deemed a license or other right of the receiving Party to use any such Confidential Information for any other purpose.

ARTICLE 12
TERM AND TERMINATION

12.1 Term. This Agreement becomes effective on the Effective Date, and, unless sooner cancelled or terminated as specifically provided in this Agreement, continues in effect on a country-by-country basis until the expiration of the Revenue Percentage Term in a country and expires in its entirety upon the expiration of the Revenue Percentage Term in the last country in the Territory (the "**Term**").

12.2 Termination for Bankruptcy. Subject to the applicable Bankruptcy Code in the country in which each Party exists under Applicable Law, each Party may terminate this Agreement in its entirety prior to the Transfer Date upon immediate written notice if the other Party (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, and/or liquidator of itself or of all or a substantial part of its property, (b) makes a general assignment for the benefit of its creditors, (c) commences a voluntary case under the Bankruptcy Code of any country, (d) files a petition seeking to take advantage of any laws relating to bankruptcy, insolvency, reorganization, winding-up or composition or readjustment of debts, (e) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in any involuntary case under the Bankruptcy Code of any country, (f) takes any corporate action to effect any of the foregoing, (g) has a proceeding or case commenced against it in any court of competent jurisdiction, seeking (i) its liquidation, reorganization, dissolution or winding-up, or the composition or readjustment of its debts, (ii) the appointment of a trustee, receiver, custodian, liquidator or the like of all or any substantial part of its assets or (iii) similar relief under the Bankruptcy Code of any country, or an order, judgment, or decree approving any of the foregoing is entered, and, in each case ((i) through (iii)), such proceeding or case continues unstayed for a period of sixty (60) days, and/or (h) has an order for relief against it entered in an involuntary case under the Bankruptcy Code of any country.

12.3 Termination for Material Breach.

(a) Notice. If prior to the Transfer Date a Party materially breaches its obligations under this Agreement with respect to a Product or country or other jurisdiction in the Territory (the "**Breaching Party**"), then the other Party (the "**Non-Breaching Party**") may give written notice to the Breaching Party identifying such material breach in reasonable detail (a "**Default Notice**") and, other than material breaches related to failure to make payments due under this Agreement which shall be cured by the Breaching Party (a) within thirty (30) days with respect to any payments under ARTICLE 7, (b) seventy-five (75) days with respect to payment of any Development Costs under ARTICLE 4 and Section 8.10, and (c) one hundred and twenty (120) days with respect to payment to any Third Party by Journey that is performing any activities under the Development Plan, the Breaching Party shall cure such material breach within ninety (90) days after delivery of the Default Notice, provided that if such material breach is not reasonably capable of cure within such ninety (90) day period, then the Breaching Party may submit, within thirty (30) days after delivery of the Default Notice, a reasonable cure plan to remedy such material breach as soon as possible that is reasonably acceptable to the Non-Breaching Party, and upon such submission, the ninety (90) day cure period will be automatically extended for so long as the Breaching Party continues to use Commercially Reasonable Efforts to cure such material breach in accordance with such cure plan (subject to the dispute resolution procedures set forth in Section 12.3(b)). For clarity, uncured failure by Journey to timely pay any Journey Development Costs and/or DRL Development Costs is deemed to be a material breach of this Agreement.

(b) Process for Disputes. If a Non-Breaching Party provides a Default Notice to the Breaching Party pursuant toSection 12.3(a) as a result of a material breach (or alleged material breach) then, on or before the end of the cure period therefor, either Party shall have the right to refer the matter to the designated executive officer of DRL and the designated executive officer of Journey (or their respective designees) (the "**Executive Officers**") pursuant to Section 13.1 before terminating this Agreement in accordance with the process set forth in Section 12.3(c). The cure period set forth inSection 12.3(a) shall be tolled during the pendency of any such dispute, and all of the terms of this Agreement will remain in effect and the Parties will continue to perform all of their respective obligations hereunder.

(c) Process for Termination. If the material breach is so cured within the remainder of the cure period, whether without or after the procedure set forth in Section 12.3(b), then this Agreement will remain in full force and effect. If the material breach is not cured within the remainder of the cure period or settled pursuant to Section 12.3(b), then, within thirty (30) days after the end of such cure period, the Non-Breaching Party shall send written notice to the Breaching Party advising of the termination of this Agreement in the applicable country in accordance with this Section 12.3(c).

12.4 Termination for Failure to Pay Second Installment. In the event that Journey has not paid the Second Installment to DRL on or within ninety (90) days from the Effective Date, DRL may immediately terminate this Agreement upon written notice to Journey. For clarity, in the event that this Agreement is terminated by DRL pursuant to this Section 12.4, except with regard to a breach by Journey of its obligations under ARTICLE 11, or fraud or willful misconduct of Journey, DRL's sole remedy with respect to a claim that Journey breached its obligations under this Agreement shall be DRL's right to keep the First Installment.

12.5 Termination for Cessation of Development. If at any time during the Development Period, Journey has ceased Development of the Product in the United States for six (6) consecutive months, then DRL may terminate this Agreement upon thirty (30) days' written notice to Journey; provided that if Journey cures such cessation of Development of the Product in the United States during such thirty (30) day period, Journey shall be deemed to have not ceased Development of the Product in the United States. As used herein "ceased Development" means that Journey has not materially progressed Development of the Product in the United States as evidenced by protracted inactivity by Journey and is not caused by (i) DRL, (ii) Applicable Laws, (iii) action or inaction of any Third Party (including any Regulatory Authority) that is reasonably beyond Journey's control, and/or (iv) due to an event that would constitute force majeure under Section 14.3.

12.6 Termination for Patent Challenge. In the event that Journey or its Affiliates or Sublicensees (individually or in association with any other person or entity) initiates or otherwise is responsible for a Patent Challenge of any claim in (a) prior to the Transfer Date, any Product Patent or DRL Background Patents, or (b) on or after the Transfer Date, any DRL Background Patents, in either case, in a country, DRL shall have the right to terminate this Agreement in the applicable country upon written notice to Journey if such Patent Challenge is not subject to Journey's withdrawal or cancellation under Applicable Law or, within thirty (30) days of an initial notice of breach by DRL, Journey has not cured the breach by withdrawing or cancelling such Patent Challenge.

12.7 Termination for Failure to Develop the Product in the European Union. If Journey fails to (a) initiate Development of the Product in the Field in the European Union within twenty-four (24) months from the receipt of Product Regulatory Approval, or (b) cause the First Commercial Sale of the Product to occur in at least one country the European Union within the European Union Approval Period, then in either case (a) or (b), DRL shall have the right to terminate this Agreement solely with respect to the European Union upon thirty (30) days' written notice to Journey unless Journey, at Journey's sole discretion, pays DRL the Launch Milestone Payment set forth as item number 1 in Table 7.4 (which applies to First Commercial Sale of the Product in the European Union).

12.8 No Other Termination after Transfer Date. Other than as provided for in Section 12.6 or Section 12.7, after the Transfer Date this Agreement cannot be terminated, in whole or in part, except by express written consent of both Parties.

12.9 Effect of Expiration or Termination.

(a) Expiration. Upon expiry of the Term on a country or other jurisdiction-by-country or other jurisdiction basis, all rights and licenses granted by a Party to the other Party under this Agreement with respect to the Product shall remain in effect in accordance with their terms and shall become irrevocable, unrestricted, and perpetual and all licenses related thereto will be fully paid up.

(b) Termination for any Reason. Upon termination of this Agreement by either Party for any reason, Journey shall not be entitled to any refund of any payments made by Journey to DRL. For clarity, this Section 12.9(b) shall not restrict Journey's rights and remedies available at law or in equity.

(c) Certain Terminations by Journey prior to Transfer Date. In the event this Agreement is terminated by Journey pursuant to Section 12.2 (for DRL bankruptcy) or Section 12.3 (for DRL material breach) prior to the Transfer Date, all rights and licenses granted to DRL by Journey under this Agreement shall immediately terminate and be of no force or effect.

(d) Certain Terminations by DRL prior to Transfer Date. In the event this Agreement is terminated by DRL pursuant to Section 12.2 (for Journey bankruptcy) or Section 12.3 (for Journey material breach), Section 12.4 (for failure to pay Second Installment), Section 12.5 (for cessation of Development) or Section 12.6 (for patent challenge) prior to the Transfer Date, then each of the following shall apply:

(i) all rights and licenses granted to DRL by Journey under this Agreement shall immediately terminate and be of no force or effect;

(ii) subject to the terms and conditions of this Agreement, Journey hereby grants to DRL and its Affiliates an exclusive (even as to Journey), royalty-free, fully paid up, transferrable, and sublicensable license under the Journey Improvements to Exploit the Product anywhere in the world; and

(iii) if DRL determines, in its sole discretion, to wind down the activities under the Development Plan, DRL shall promptly commence winding down its activities under the Development Plan at Journey's sole cost and expense, provided that Journey's obligations with respect to such cost and expense will be limited to the cost and expense actually incurred by DRL in performing activities during the Wind Down Period and will not exceed the cost and expense of such activities as estimated during the Development Period and provided for in the Development Plan.

(e) Termination after the Transfer Date.

(i) In the event this Agreement is terminated in the European Union by DRL pursuant to Section 12.7 (for Journey's failure to Develop the Product in the European Union), then each of the following shall apply:

(A) all rights and licenses granted by DRL to Journey under this Agreement with respect to the European Union shall immediately terminate and be of no force or effect.

(B) subject to the terms and conditions of this Agreement, Journey hereby grants to DRL and its Affiliates an exclusive (even as to Journey), royalty-free, fully paid-up, transferable, sublicensable, perpetual and irrevocable license under the Product IP and Journey Improvements to Exploit the Product in the European Union.

(C) Journey, at its sole cost and expense, shall (A) promptly commence winding down its Commercialization activities in the European

Union, and (B) use good faith efforts to complete any and all such wind-down Commercialization activities within three (3) months after the effective date of termination of this Agreement with respect to the European Union.

(D) To the extent requested by DRL, Journey, at its sole cost and expense, shall transfer, assign and convey to DRL all or part, as determined by DRL each of the following as they relate to the European Union: (A) the Product IP, (B) the Product Trademarks, (C) the Regulatory Approvals (or applications therefor), the Regulatory Materials, and the related clinical data contained or relied upon in any of the foregoing in Controlled by DRL as of the effective date of the termination of this Agreement with respect to the European Union, and (D) the contracts that relate to the Product, including any sublicenses to any Sublicensee.

(E) Journey shall provide assistance as may be requested by DRL and as is reasonably necessary or useful for DRL to continue Exploit the Products in the European Union, including (A) furnishing to DRL all Journey Know-How to the extent not already possessed by DRL relating to the European Union, (B) assigning or amending as appropriate and practicable, upon request of DRL, any agreements or arrangements with Third Party contractors to distribute, sell or otherwise Commercialize or Manufacture the Products in the European Union. To the extent that any such contract between Journey and a Third Party is not assignable to DRL or covers products in addition to the Products, Journey shall reasonably cooperate to the extent practicable with DRL to arrange to continue to provide such services for a reasonable time after the termination of this Agreement.

(ii) In the event this Agreement is terminated by DRL pursuant to Section 12.6 (for patent challenge) on or after the Transfer Date, then each of the following shall apply:

(A) all rights and licenses granted by DRL to Journey under this Agreement shall immediately terminate and be of no force or effect.

(B) all financial obligations of Journey pursuant to ARTICLE 7 shall remain in full force and effect.

12.10 Rights in Bankruptcy.

(a) Applicability of 11 U.S.C. § 365(n). All rights and licenses (collectively, the "**Intellectual Property**") granted by each Party to the other Party under or pursuant to this Agreement, including all rights and license to use improvements and enhancements developed during the Term, are intended to be, and shall otherwise be deemed to be, for purposes of the Bankruptcy Code or any analogous provisions in any other country or other jurisdiction, licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code. The Parties agree that the licensee of such Intellectual Property under this Agreement shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, including Section 365(n) of the Bankruptcy Code, or any analogous provisions in any other country or other jurisdiction. All of the rights granted to either Party under this Agreement shall be deemed to exist immediately before the occurrence of any bankruptcy case in which the other Party is the debtor.

(b) Rights of non-Debtor Party in Bankruptcy. If a bankruptcy proceeding is commenced by or against either Party under the Bankruptcy Code or any analogous provisions in any other country or other jurisdiction, the non-debtor Party shall be entitled to a complete duplicate of (or complete access to, as appropriate) any Intellectual Property and all embodiments of such Intellectual Property, which, if not already in the non-debtor Party's possession, shall be delivered to the non-debtor Party within five (5) Business Days of such request; *provided*, that the debtor Party is excused from its obligation to deliver the Intellectual Property to the extent the debtor Party continues to perform all of its obligations under this Agreement and the Agreement has not been rejected pursuant to the Bankruptcy Code or any analogous provision in any other country or other jurisdiction.

12.11 Survival. Termination or expiration of this Agreement (either in its entirety or with respect to one (1) or more countries) for any reason shall be without prejudice to any rights that shall have accrued to the benefit of a Party prior to such termination or expiration. For clarity, termination for breach by either Party under Section 12.3, shall not preclude the terminating Party from pursuing all rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement nor prejudice either Party's right to obtain performance of any obligation. Notwithstanding anything to the contrary, in addition to those specified in Section 12.9, the following provisions will survive any expiration or termination of this Agreement: ARTICLE 1 (Definitions), ARTICLE 10 (Indemnification), ARTICLE 11 (Confidentiality), ARTICLE 13 (Dispute Resolution), ARTICLE 14 (Miscellaneous), and Sections 2.2(b) and (d) (Journey License Grant to DRL), 7.10 (Foreign Exchange), 7.11 (Payment Method; Late Payments), 7.12 (Records), 7.13 (Audits), 7.14 (Taxes), 7.15 (No Joint Venture), 8.1 (Ownership of Existing Know-How and Patents), 8.3 (Ownership of Journey Improvements), 8.6(c) (Cooperation), 8.9 (Infringement of Third Party Claim) (but with respect to Section 8.6(c) and 8.9, solely with respect to actions that are ongoing at the time of such termination), 12.9 (Effects of Termination) and 12.11 (Survival). Except as expressly set forth herein, all rights and obligations of the Parties hereunder shall terminate on the expiration or termination of this Agreement.

ARTICLE 13
DISPUTE RESOLUTION

13.1 Referral of Disputes to Parties Executive Officers; Arbitration. In the event of any disputes, controversies, and/or differences between the Parties, arising out of, in relation to, or in connection with this Agreement, including any alleged failure to perform, or breach, of this Agreement, or any issue relating to the validity, construction, interpretation, enforceability, performance, application, and/or termination of this Agreement (each a "**Dispute**"), then upon the written request of either Party, which request shall set forth the nature of the Dispute in sufficient detail to allow for meaningful good faith negotiations, the Dispute shall be first submitted to the Executive Officers of each Party, who shall have full authority to negotiate for and bind their respective Party, for attempted resolution by good faith negotiations within thirty (30) days. If the Dispute is not resolved within thirty (30) days following the written request for amicable resolution, or such other time as the Parties may mutually agree in writing, then (a) if the Dispute is an intellectual property Dispute relating to the scope, validity, enforceability, or infringement of any Patent or Trademark rights covering the Manufacture, use, importation, offer for sale, sale or other Exploitation of the Product, then such Dispute shall be resolved pursuant to Section 13.5, and (b) for any Dispute that is not one of the foregoing, then either Party may, initiate an arbitration pursuant to **Exhibit H**. Any determination pursuant to this Section 13.1 that a Party is in material breach of its material obligations hereunder shall specify a (nonexclusive) set of actions to be taken to cure such material breach, if feasible. Notwithstanding anything herein to the contrary, nothing in this Section 13.1 shall preclude either Party from seeking interim or provisional relief, including a temporary restraining order, preliminary injunction, and/or other interim equitable relief concerning a Dispute in accordance with Section 13.2, if reasonably deemed by such Party necessary to protect the interests of such Party. Any Party may bring an action or proceeding in any court of competent jurisdiction seeking temporary injunctive or equitable relief (or their non-U.S. equivalents), or to prevent irreparable harm preserve the status quo until any arbitration is commenced. The Parties agree that any court action or proceeding to compel or in support of arbitration or for provisional remedies in aid of arbitration, including any action to enforce the provisions of this Section, may be brought in the federal or state courts located in New York, New York (the "**New York Courts**"). The Parties hereby unconditionally and irrevocably submit to the non-exclusive jurisdiction of the New York Courts for such purpose, and in any action to enforce any arbitration award rendered hereunder and waive any right to stay or dismiss any such actions or proceedings brought before the New York Courts based on forum non conveniens or improper venue. Except in a proceeding to enforce the results of the arbitration or as otherwise required by Applicable Laws, no Party nor any arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written agreement of both Parties. This ARTICLE 13 shall be specifically enforceable in any court of competent jurisdiction.

13.2 Equitable Relief. Notwithstanding Section 13.1, each Party acknowledges that its material breach of Sections 4.3(b), 6.1, 6.3, 8.6(c), 9.6, 9.7, and/or ARTICLE 11 may cause irreparable harm to the other Party, which cannot be reasonably or adequately compensated by damages in an action at law. By reason thereof, each Party agrees that the other Party may, in addition to any other remedies it may have under this Agreement or otherwise, seek preliminary and permanent injunctive and other equitable relief from the New York Courts to prevent or curtail any actual or threatened breach of any Article or Section referenced in this Section that is reasonably likely to cause it irreparable harm. For the avoidance of doubt, unless DRL has properly terminated this Agreement prior to the Transfer Date in accordance with this Agreement, if (a) DRL has received the Second Installment and all Milestone Payments in full owed by Journey pursuant to Section 7.2, (b) DRL has been reimbursed in full for all DRL Development Costs that are not disputed in good faith by Journey, and (c) Journey has provided DRL with the notice described in Section 5.1, then the Assignment Agreements shall become effective and Journey will be entitled to specific performance, if necessary, to ensure the complete sale, assignment, transfer, and conveyance of such rights, title, and interest, in and to the Assigned Assets and to obtain DRL's reasonable assistance in confirming such sale, assignment, transfer, and conveyance of the Assigned Assets.

13.3 Governing Law. This Agreement and all disputes arising out of or related to this Agreement or any breach hereof are governed by and construed under the laws of the State of New York, without giving effect to any choice of law principles that would require the application of the laws of a different state. The Parties agree to exclude the application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods.

13.4 Waiver of Jury Trial. EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THAT FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.4.

13.5 Patent and Trademark Disputes. Notwithstanding Section 13.1, any Dispute relating to the scope, validity, enforceability or infringement of any Patent or Trademark rights covering the Manufacture, use, importation, offer for sale, sale or other Exploitation of the Product will be submitted to a court of competent jurisdiction in the country or other jurisdiction in which such Patent or Trademark rights were granted or arose.

ARTICLE 14
MISCELLANEOUS

14.1 Entire Agreement; Conflict; Amendment. This Agreement, including the Exhibits attached hereto, together with the Assignment Agreements, the Pharmacovigilance Agreement and any other documents delivered pursuant hereto or thereto sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions, and understandings between the Parties hereto and thereto and their Affiliates with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior and contemporaneous agreements and understandings between the Parties with respect to the subject matter hereof, including the Prior CDA. If a conflict exists between this Agreement and any ancillary agreement, this Agreement shall control. No subsequent alteration, amendment, change or addition to this Agreement will be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party.

14.2 Licenses and Permits. Until the expiration or termination of this Agreement, on a country-by-country basis, each Party shall, at its sole cost and expense, maintain in full force and effect all necessary licenses, permits and other authorizations required by Applicable Law in order to carry out its obligations under this Agreement.

14.3 Force Majeure. Both Parties will be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure; *provided* the non-performing Party promptly provides notice of the start and stop of such force majeure event to the other Party. Such excuse will continue for so long as the condition constituting force majeure continues, provided the non-performing Party takes reasonable efforts to remove the condition as soon as possible. For purposes of this Agreement, force majeure is a condition beyond the reasonable control of the affected Party and without fault of such affected Party, including an act of God, war, civil commotion, terrorist act, epidemic, pandemic, inoperability or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and orders by a Governmental Authority. Performance shall be excused only to the extent of and during the reasonable continuance of such force majeure event. Any deadline or time for performance that falls during or subsequent to the occurrence of any of the force majeure events referred shall be automatically extended for a period of time equal to the period of such event. If a force majeure persists for more than ninety (90) days, then the Parties will discuss in good faith the modification of the Parties' obligations under this Agreement.

14.4 Notices. Any notice required or permitted to be given under this Agreement will be in writing, will specifically refer to this Agreement, and will be addressed to the appropriate Party at the address specified below or such other address as may be specified by such Party in writing in accordance with this Section 14.4, and will be deemed to have been given for all purposes (a) when received, if hand-delivered or sent by a reputable courier service, or (b) four (4) Business Days after mailing, if mailed by first class certified or registered airmail, postage prepaid, return receipt requested.

If to DRL: Dr. Reddy's Laboratories Ltd.
[***]
And

[***]

With copies to (which will not constitute notice):

[***]

And

[***]

If to Journey: Journey Medical Corporation
9237 East Via De Ventura Blvd., Suite 105
Scottsdale, AZ 85258, USA
Attn: President & CEO
[***]

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

Journey Medical Corporation
9237 East Via De Ventura Blvd., Suite 105
Scottsdale, AZ 85258, USA
Attn: General Counsel

14.5 No Strict Construction; Interpretation; Headings. The language in this Agreement is to be construed in all cases according to its fair meaning. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender applies to all genders. The word "or" is used in the disjunctive sense and the word "and" is used in the conjunctive sense (except that any list of terms joined by "and," such as "A, B, and C," herein will mean "any or all of such terms" (such as "any or all of A, B, and C" (e.g., A, A and B, or all of A, B, and C))). Whenever "and/or" is used in this Agreement, it means "A or B or both." Whenever this Agreement refers to a number of days, unless specifically designated as Business Days, such number refers to calendar days. The captions of this Agreement are for convenience of reference only and in no way define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The terms "including," "include," or "includes," mean including, without limiting the generality of any description preceding such term. The term "in writing" regarding any representation or warranty made herein means in any written form, including in an e-mail communication to the applicable Party or its Affiliates. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other 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 therein), (b) any reference to any Applicable Laws will be construed as referring to such Applicable Laws as from time to time enacted, repealed or amended, (c) any reference to any Person will be construed to include the Person's successors and permitted assigns, (d) the words "herein," "hereof," and "hereunder" and words of similar import will each be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) any reference to the words "mutually agree" or "mutual written agreement" will not impose any obligation on either Party to agree to any terms relating thereto or to engage in discussions relating to such terms except as such Party may determine in such Party's sole discretion, (f) all references to Sections and Exhibits will be construed to refer to Sections and Exhibits to this Agreement, (g) the words "copy" and "copies" and words of similar import when used in this Agreement include, to the extent available, electronic copies, files, storage, or databases containing the information, files, items, documents, or materials to which such words apply, and (h) wherever used, the word "shall" and the word "will" are each understood to be imperative or mandatory in nature and are interchangeable with one another. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions.

14.6 Assignment. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned, and/or delayed, except that (a) after the Transfer Date, DRL may make such an assignment or transfer without Journey's consent to its Affiliates or to a Third Party successor that acquires all or substantially all of the assets of the business of DRL to which this Agreement relates, and (b) after payment by Journey for all DRL Development Costs in-full and of all of the Milestone Payments set forth in Sections 7.1, 7.2 and 7.3 (which may be paid early by Journey at Journey's discretion), Journey may make an assignment or transfer without DRL's consent to its Affiliates or to a Third Party successor that acquires all or substantially all of the assets of the business of Journey to which this Agreement relates or in connection with an Acquisition Event, so long as Journey or the acquiror thereof timely makes any applicable payment owed to DRL under Section 7.8; provided that Journey shall remain responsible for, and agrees to pay, perform and discharge any and all debts and liabilities accrued prior to, and remain accruing as of, the effective date of such assignment or transfer. Any successor or assignee of rights or obligations permitted hereunder will, in writing to the other Party, expressly assume performance of the rights or obligations of the Party assigning rights to it under this Agreement. This Agreement will be binding on the successor of the assigning Party. Any assignment or attempted assignment by either Party in violation of the terms of this Section 14.6 is null, void, and of no legal effect.

14.7 Performance by Affiliates and/or Sublicensees. Each Party may discharge any obligations and exercise any right hereunder through any of its Affiliates and/or Sublicensees. Each Party hereby guarantees the performance by its Affiliates and Sublicensees or sublicensees, as applicable, of such Party's obligations under this Agreement and shall cause its Affiliates and Sublicensees to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate and/or Sublicensee of any of such Party's obligations under this Agreement also is a breach by such Party, and the other Party may proceed directly against such Party and/or Sublicensee without any obligation to first proceed against such Party's Affiliate and/or Sublicensee.

14.8 Further Assurances and Actions. The Parties agree to execute and deliver such other documents, certificates, agreements, and other writings and materials, and to take such other actions as may be reasonably necessary to consummate and implement expeditiously the express purposes and intent contemplated by this Agreement.

14.9 No Third Party Beneficiaries. Except for the rights to indemnification provided for underARTICLE 10, (a) all rights, benefits, and remedies under this Agreement are solely intended for the benefit of DRL and Journey, and (b) no Third Party shall have any rights whatsoever to (i) enforce any obligation contained in this Agreement; (ii) seek a benefit or remedy for any breach of this Agreement; or (iii) take any other action relating to this Agreement under any legal theory, including actions in contract, tort (including negligence, gross negligence, and strict liability), or as a defense, setoff, and/or counterclaim to any action or claim brought or made by the Parties.

14.10 Severability. Each of the provisions contained in this Agreement will be severable, and the unenforceability of one will not affect the enforceability of any others or of the remainder of this Agreement. If any one or more of the provisions of this Agreement, or the application thereof in any circumstances, is held to be invalid, illegal, and/or unenforceable in any respect for any reason, the Parties shall negotiate in good faith with a view to the substitution therefor of a suitable and equitable solution to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid provision; provided that the validity, legality, and/or enforceability of any such provision in every other respect and of the remaining provisions of this Agreement will not be in any way impaired thereby, it being intended that all of the rights and privileges of the Parties hereto will be enforceable to the fullest extent permitted by Applicable Law. The Parties agree that if a court finds that the scope of any one or more of the provisions contained in this Agreement shall, for any reason, be invalid, illegal, excessively broad, unreasonable, and/or unenforceable in any respect, then the court may modify such provision and render it reasonable.

14.11 No Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit therefrom, but no such waiver will be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. The waiver, delay, and/or the failure of any Party to enforce or exercise any term, condition, and/or part of this Agreement at any time and/or in any one or more instances will not be deemed to be or construed as a waiver of the same or any other term, condition, and/or part, nor will it forfeit any rights, power, and/or privilege to future enforcement thereof. No single or partial exercise of any right, power, and/or privilege will preclude any other or further exercise of such right, power, and/or privilege or the exercise of any other right, power, and/or privilege. To the maximum extent permitted by Applicable Law, (a) no claim or right arising out of this Agreement and/or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver and/or renunciation of the claim or right unless in writing signed by the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to and/or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement. Except as expressly set forth in this Agreement, all rights and/or remedies available to a Party, whether under this Agreement or afforded by Applicable Law or otherwise, will be cumulative and not in the alternative to any other rights or remedies that may be available to such Party.

14.12 Relationship of the Parties. Neither Party will have any responsibility for the hiring, termination, and/or compensation of the other Party's employees or for any employee benefits of such employee. No employee or representative of a Party will have any authority to bind and/or obligate the other Party to this Agreement for any sum or in any manner whatsoever, and/or to create or impose any contractual or other liability on the other Party without said Party's approval. For all purposes, and notwithstanding any other provision of this Agreement to the contrary, DRL and Journey shall be independent contractors and the legal relationship between the Parties shall not constitute a

partnership, joint venture, or agency, including for all tax purposes. This Agreement is not a partnership or deemed partnership or an Association of Person ("**AOP**") agreement. Nothing in this Agreement will be construed to establish a relationship of partners, AOPs, or joint venturers between the Parties. Neither DRL nor Journey shall make any statements, representations, and/or commitments of any kind, and/or to take any action that is binding on the other, in each case, without the prior consent of the other Party to do so.

14.13 English Language. This Agreement was prepared and executed in the English language, which language governs the interpretation of, and any dispute regarding, the terms and conditions of this Agreement.

14.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument. Each Party may execute this Agreement in AdobeTM Portable Document Format ("**PDF**") sent by electronic mail. In addition, PDF signatures of authorized signatories of any Party will be deemed to be original signatures and will be valid and binding, and delivery of a PDF signature by any Party will constitute due execution and delivery of this Agreement.

14.15 Expenses. Each of the Parties will bear its own direct and indirect expenses incurred in connection with the negotiation and preparation of this Agreement and, except as set forth in this Agreement, the performance of the obligations contemplated hereby and thereby.

14.16 Acknowledgments and Representations. Each of the Parties acknowledges and represents that it has been represented by legal counsel regarding its rights and obligations under this Agreement, has participated in the drafting hereof, and fully understands the terms and conditions of this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized offices as of the Effective Date.

DR. REDDY'S LABORATORIES, LTD.

By: /s/
Name:
Title

JOURNEY MEDICAL CORPORATION

By: /s/
Name:
Title

[Signature Page to Assignment License, and Collaboration Agreement]

Exhibit 10.15

Journey Medical Corporation

FUTURE ADVANCE PROMISSORY NOTE

FOR AMOUNTS ADVANCED AS SHOWN ON EXHIBIT A ATTACHED HERETO

1. Principal Amounts. Journey Medical Corporation (f/k/a Coronado Dermatology, Inc.) (the "***Company***"), for value received, pursuant to this Future Advance Promissory Note (the "***Note***") hereby promises to pay to the order of Fortress Biotech, Inc. ("***Fortress***"), in lawful money of the United States of America, the principal amount as may be or have been advanced from time to time by Fortress as shown on Exhibit A attached hereto, with zero interest payable on such principal amounts. All principal amounts shall be paid on or before December 31, 2024. Any or all unpaid principal on this Note may be prepaid at any time without penalty. By its signature below, the Company acknowledges the dates and amounts of all prior advances by Fortress as of the issuance of this Note.

2. Advances. Advances under this Note shall be subject to the following terms and conditions:

(a) draws may be made upon request by the Company with at least three (3) days advance notice to Fortress;

(b) in its sole and absolute discretion, Fortress may refuse to make any advance hereunder;

(c) all advances, at the time made, shall be noted onExhibit A of this Note and shall be signed by an authorized officer of the Company; and

(d) no advances will be made if the outstanding principal hereunder exceeds Twenty Million Dollars ($20,000,000) at the time a request is made by the Company.

3 . Attorneys' Fees. If the indebtedness represented by this Note or any part thereof is collected in bankruptcy, receivership or other judicial proceedings or if this Note is placed in the hands of attorneys for collection after default, the Company agrees to pay, in addition to the principal payable hereunder, reasonable attorneys' fees and costs incurred by Fortress.

4. Notices. Any notice, other communication or payment required or permitted hereunder shall be in writing and shall be deemed to have been given upon receipt by the other party.

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5 . Acceleration. This Note shall become immediately due and payable if (i) the Company commences any proceeding in bankruptcy or for dissolution, liquidation, winding-up, composition or other relief under state or federal bankruptcy laws; or (ii) such proceedings are commenced against the Company, or a receiver or trustee is appointed for the Company or a substantial part of its property; or (iii) there is any material breach of any material covenant, warranty, representation or other term or condition of this Note at any time that is not cured within the time periods permitted therein, or if no cure period therein, within five (5) days after the date on which such breach occurs.

6. No Dilution or Impairment. The Company will not, by amendment of its charter documents or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Note, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the holder of this Note.

7. Waivers. Company hereby waives presentment, demand for performance, notice of nonperformance, protest, notice of protest and notice of dishonor. No delay on the part of Fortress in exercising any right hereunder shall operate as a waiver of such right or any other right. This Note is being delivered in and shall be construed in accordance with the laws of the State of Delaware, without regard to the conflicts of laws provisions thereof.

8. Governing Law. This Note is being delivered in and shall be construed in accordance with the laws of the State of New York, without regard to the conflicts of laws provisions thereof.

ISSUED as of June 6, 2015.

Journey Medical Corporation

By: /s/ Claude Maraoui
Claude Maraoui
Chief Executive Officer

Exhibit 10.16

INDEMNITY AGREEMENT

This Indemnity Agreement (this "**Agreement**") dated as of [ ], 2021, is made by and between **Journey Medical Corporation** a Delaware corporation (the "**Company**"), and _____ ("**Indemnitee**").

Recitals

A. The Company desires to attract and retain the services of highly qualified individuals as directors, officers, employees and agents.

B. The Company's bylaws (the "**Bylaws**") require that the Company indemnify its directors, and empowers the Company to indemnify its officers, employees and agents, as authorized by the Delaware General Corporation Law, as amended (the "**Code**"), under which the Company is organized and such Bylaws expressly provide that the indemnification provided therein is not exclusive and contemplates that the Company may enter into separate agreements with its directors, officers and other persons to set forth specific indemnification provisions.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and available insurance as adequate under the present circumstances, and the Company has determined that Indemnitee and other directors, officers, employees and agents of the Company may not be willing to serve or continue to serve in such capacities without additional protection.

D. The Company desires and has requested Indemnitee to serve or continue to serve as a director, officer, employee or agent of the Company, as the case may be, and has proffered this Agreement to Indemnitee as an additional inducement to serve in such capacity.

E. Indemnitee is willing to serve, or to continue to serve, as a director, officer, employee or agent of the Company, as the case may be, if Indemnitee is furnished the indemnity provided for herein by the Company.

Agreement

Now Therefore, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Definitions.

(a) Agent. For purposes of this Agreement, the term "agent" of the Company means any person who: (i) is or was a director, officer, employee or other fiduciary of the Company or a subsidiary of the Company; or (ii) is or was serving at the request or for the convenience of, or representing the interests of, the Company or a subsidiary of the Company, as a director, officer, employee or other fiduciary of a foreign or domestic corporation, partnership, joint venture, trust or other enterprise.

(b) Expenses. For purposes of this Agreement, the term "expenses" shall be broadly construed and shall include, without limitation, all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys', witness, or other professional fees and related disbursements, and other out-of-pocket costs of whatever nature), actually and reasonably incurred by Indemnitee in connection with the investigation, defense or appeal of a proceeding or establishing or enforcing a right to indemnification under this Agreement, the Code or otherwise, and amounts paid in settlement by or on behalf of Indemnitee, but shall not include any judgments, fines or penalties actually levied against Indemnitee for such individual's violations of law. The term "expenses" shall also include reasonable compensation for time spent by Indemnitee for which he is not compensated by the Company or any subsidiary or third party (i) for any period during which Indemnitee is not an agent, in the employment of, or providing services for compensation to, the Company or any subsidiary; and (ii) if the rate of compensation and estimated time involved is approved by the directors of the Company who are not parties to any action with respect to which expenses are incurred, for Indemnitee while an agent of, employed by, or providing services for compensation to, the Company or any subsidiary.

(c) Proceedings. For purposes of this Agreement, the term "proceeding" shall be broadly construed and shall include, without limitation, any threatened, pending, or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, and whether formal or informal in any case, in which Indemnitee was, is or will be involved as a party or otherwise by reason of: (i) the fact that Indemnitee is or was a director or officer of the Company; (ii) the fact that any action taken by Indemnitee or of any action on Indemnitee's part while acting as director, officer, employee or agent of the Company; or (iii) the fact that Indemnitee is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, and in any such case described above, whether or not serving in any such capacity at the time any liability or expense is incurred for which indemnification, reimbursement, or advancement of expenses may be provided under this Agreement.

(d) Subsidiary. For purposes of this Agreement, the term "subsidiary" means any corporation or limited liability company of which more than 50% of the outstanding voting securities or equity interests are owned, directly or indirectly, by the Company and one or more of its subsidiaries, and any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(e) Independent Counsel. For purposes of this Agreement, the term "independent counsel" means a law firm, or a partner (or, if applicable, member) of such a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five (5) years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party, or (ii) any other party to the proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "independent counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

2. Agreement to Serve. Indemnitee will serve, or continue to serve, as a director, officer, employee or agent of the Company or any subsidiary, as the case may be, faithfully and to the best of his or her ability, at the will of such corporation (or under separate agreement, if such agreement exists), in the capacity Indemnitee currently serves as an agent of such corporation, so long as Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the bylaws or other applicable charter documents of such corporation, or until such time as Indemnitee tenders his or her resignation in writing; provided, however, that nothing contained in this Agreement is intended as an employment agreement between Indemnitee and the Company or any of its subsidiaries or to create any right to continued employment of Indemnitee with the Company or any of its subsidiaries in any capacity.

The Company acknowledges that it has entered into this Agreement and assumes the obligations imposed on it hereby, in addition to and separate from its obligations to Indemnitee under the Bylaws, to induce Indemnitee to serve, or continue to serve, as a director, officer, employee or agent of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director, officer, employee or agent of the Company.

3. Indemnification.

(a) Indemnification in Third Party Proceedings. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding, for any and all expenses, actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement or appeal of such proceeding.

(b) Indemnification in Derivative Actions and Direct Actions by the Company. Subject to Section 10 below, the Company shall indemnify Indemnitee to the fullest extent permitted by the Code, as the same may be amended from time to time (but, only to the extent that such amendment permits Indemnitee to broader indemnification rights than the Code permitted prior to adoption of such amendment), if Indemnitee is a party to or threatened to be made a party to or otherwise involved in any proceeding by or in the right of the Company to procure a judgment in its favor, against any and all expenses actually and reasonably incurred by Indemnitee in connection with the investigation, defense, settlement, or appeal of such proceedings.

(c) Indemnification of Related Parties. To the extent that Indemnitee is serving on the Board of Directors of the Company at the direction of any stockholder of the Company who, pursuant to the Certificate of Incorporation or contractual arrangement, shall have the right to elect or appoint Indemnitee to the Board (an "**Appointing Stockholder**"), the Appointing Stockholder will be entitled to indemnification hereunder for reasonable expenses to the extent arising by reason of the fact that Appointing Stockholder has the ability to appoint or elect Indemnitee to the Board of Directors of the Company, provided however, that the terms of this Agreement as they relate to procedures for indemnification of Indemnitee and advancement of expenses shall apply to any such indemnification of Appointing Stockholder.

4. Indemnification of Expenses of Successful Party. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any proceeding or in defense of any claim, issue or matter therein, including the dismissal of any action without prejudice, the Company shall indemnify Indemnitee against all expenses actually and reasonably incurred in connection with the investigation, defense or appeal of such proceeding.

5. Partial Indemnification. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses actually and reasonably incurred by Indemnitee in the investigation, defense, settlement or appeal of a proceeding, but is precluded by applicable law or the specific terms of this Agreement to indemnification for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

6. Advancement of Expenses. To the extent not prohibited by law, the Company shall advance the expenses incurred by Indemnitee in connection with any proceeding, and such advancement shall be made within twenty (20) days after the receipt by the Company of a statement or statements requesting such advances (which shall include invoices received by Indemnitee in connection with such expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice) and upon request of the Company, an undertaking to repay the advancement of expenses if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. Advances shall be unsecured, interest free and without regard to Indemnitee's ability to repay the expenses. Advances shall include any and all expenses actually and reasonably incurred by Indemnitee pursuing an action to enforce Indemnitee's right to indemnification under this Agreement, or otherwise and this right of advancement, including expenses incurred preparing and forwarding statements to the Company to support the advances claimed. Indemnitee acknowledges that the execution and delivery of this Agreement shall constitute an undertaking providing that Indemnitee shall, to the fullest extent required by law, repay the advance if and to the extent that it is ultimately determined by a court of competent jurisdiction in a final judgment, not subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. The right to advances under this Section shall continue until final disposition of any proceeding, including any appeal therein. This Section 6 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 10(b).

7. Notice and Other Indemnification Procedures.

(a) Notification of Proceeding. Indemnitee will notify the Company in writing promptly upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any proceeding or matter which may be subject to indemnification or advancement of expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to Indemnitee under this Agreement or otherwise.

(b) Request for Indemnification and Indemnification Payments. Indemnitee shall notify the Company promptly in writing upon receiving notice of any demand, judgment or other requirement for payment that Indemnitee reasonably believes to be subject to indemnification under the terms of this Agreement, and shall request payment thereof by the Company. Indemnification payments requested by Indemnitee under Section 3 hereof shall be made by the Company no later than sixty (60) days after receipt of the written request of Indemnitee. Claims for advancement of expenses shall be made under the provisions of Section 6 herein.

(c) Application for Enforcement. In the event the Company fails to make timely payments as set forth in Sections 6 or 7(b) above, Indemnitee shall have the right to apply to any court of competent jurisdiction for the purpose of enforcing Indemnitee's right to indemnification or advancement of expenses pursuant to this Agreement. In such an enforcement hearing or proceeding, the burden of proof shall be on the Company to prove that indemnification or advancement of expenses to Indemnitee is not required under this Agreement or permitted by applicable law. Any determination by the Company (including its Board of Directors, stockholders or independent counsel) that Indemnitee is not entitled to indemnification hereunder, shall not be a defense by the Company to the action nor create any presumption that Indemnitee is not entitled to indemnification or advancement of expenses hereunder.

(d) Indemnification of Certain Expenses. The Company shall indemnify Indemnitee against all expenses incurred in connection with any hearing or proceeding under this Section 7 unless the Company prevails in such hearing or proceeding on the merits in all material respects.

8. Assumption of Defense. In the event the Company shall be requested by Indemnitee to pay the expenses of any proceeding, the Company, if appropriate, shall be entitled to assume the defense of such proceeding, or to participate to the extent permissible in such proceeding, with counsel reasonably acceptable to Indemnitee. Upon assumption of the defense by the Company and the retention of such counsel by the Company, the Company shall not be liable to Indemnitee under this Agreement for any fees of counsel subsequently incurred by Indemnitee with respect to the same proceeding, provided that Indemnitee shall have the right to employ separate counsel in such proceeding at Indemnitee's sole cost and expense. Notwithstanding the foregoing, if Indemnitee's counsel delivers a written notice to the Company stating that such counsel has

reasonably concluded that there may be a conflict of interest between the Company and Indemnitee in the conduct of any such defense or the Company shall not, in fact, have employed counsel or otherwise actively pursued the defense of such proceeding within a reasonable time, then in any such event the fees and expenses of Indemnitee's counsel to defend such proceeding shall be subject to the indemnification and advancement of expenses provisions of this Agreement.

9. Insurance. To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any subsidiary ("D&O Insurance"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

10. Exceptions.

(a) Certain Matters. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee on account of any proceeding with respect to (i) remuneration paid to Indemnitee if it is determined by final judgment or other final adjudication that such remuneration was in violation of law (and, in this respect, both the Company and Indemnitee have been advised that the Securities and Exchange Commission believes that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication, as indicated in Section 10(d) below); (ii) a final judgment rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended, or other provisions of any federal, state or local statute or rules and regulations thereunder; (iii) a final judgment or other final adjudication that Indemnitee's conduct was in bad faith, knowingly fraudulent or deliberately dishonest or constituted willful misconduct (but only to the extent of such specific determination); or (iv) on account of conduct that is established by a final judgment as constituting a breach of Indemnitee's duty of loyalty to the Company or resulting in any personal profit or advantage to which Indemnitee is not legally entitled. For purposes of the foregoing sentence, a final judgment or other adjudication may be reached in either the underlying proceeding or action in connection with which indemnification is sought or a separate proceeding or action to establish rights and liabilities under this Agreement.

(b) Claims Initiated by Indemnitee. Any provision herein to the contrary notwithstanding, the Company shall not be obligated to indemnify or advance expenses to Indemnitee with respect to proceedings or claims initiated or brought by Indemnitee against the Company or its directors, officers, employees or other agents and not by way of defense, except (i) with respect to proceedings brought to establish or enforce a right to indemnification under this Agreement or under any other agreement, provision in the Bylaws or Certificate of Incorporation or applicable law, or (ii) with respect to any other proceeding initiated by Indemnitee that is either approved by the Board of Directors or Indemnitee's participation is required by applicable law. However, indemnification or advancement of expenses may be provided by the Company in specific cases if the Board of Directors determines it to be appropriate.

(c) Unauthorized Settlements. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee under this Agreement for any amounts paid in settlement of a proceeding effected without the Company's written consent. Neither the Company nor Indemnitee shall unreasonably withhold consent to any proposed settlement; provided, however, that the Company may in any event decline to consent to (or to otherwise admit or agree to any liability for indemnification hereunder in respect of) any proposed settlement if the Company is also a party in such proceeding and determines in good faith that such settlement is not in the best interests of the Company and its stockholders.

(d) Securities Act Liabilities. Any provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement to indemnify Indemnitee or otherwise act in violation of any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act of 1933, as amended (the "Act"), or in any registration statement filed with the SEC under the Act. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

11. Nonexclusivity and Survival of Rights. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which Indemnitee may at any time be entitled under any provision of applicable law, the Company's Certificate of Incorporation, Bylaws or other agreements, both as to action in Indemnitee's official capacity and Indemnitee's action as an agent of the Company, in any court in which a proceeding is brought, and Indemnitee's rights hereunder shall continue after Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors, administrators and assigns of Indemnitee. The obligations and duties of the Company to Indemnitee under this Agreement shall be binding on the Company and its successors and assigns until terminated in accordance with its terms. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her corporate status prior to such amendment, alteration or repeal. To the extent that a change in the Code, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Company's Certificate of Incorporation, Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, by Indemnitee shall not prevent the concurrent assertion or employment of any other right or remedy by Indemnitee.

12. Term. This Agreement shall continue until and terminate upon the later of: (a) five (5) years after the date that Indemnitee shall have ceased to serve as a director or and/or officer, employee or agent of the Company; or (b) one (1) year after the final termination of any proceeding, including any appeal then pending, in respect to which Indemnitee was granted rights of indemnification or advancement of expenses hereunder.

No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of five (5) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such five-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

13. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who, at the request and expense of the Company, shall execute all papers required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

14. Interpretation of Agreement. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification to Indemnitee to the fullest extent now or hereafter permitted by law.

15. Severability. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (a) the validity, legality and enforceability of the remaining provisions of the Agreement (including without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 14 hereof.

16. Amendment and Waiver. No supplement, modification, amendment, or cancellation of this Agreement shall be binding unless executed in writing by the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

17. Notice. Except as otherwise provided herein, any notice or demand which, by the provisions hereof, is required or which may be given to or served upon the parties hereto shall be in writing and, if by telegram, telecopy or telex, shall be deemed to have been validly served, given or delivered when sent, if by overnight delivery, courier or personal delivery, shall be deemed to have been validly served, given or delivered upon actual delivery and, if mailed, shall be deemed to have been validly served, given or delivered three (3) business days after deposit in the United States mail, as registered or certified mail, with proper postage prepaid and addressed to the party or parties to be notified at the addresses set forth on the signature page of this Agreement (or such other address(es) as a party may designate for itself by like notice). If to the Company, notices and demands shall be delivered to the attention of the Secretary of the Company.

18. Governing Law. This Agreement shall be governed exclusively by and construed according to the laws of the State of New York, as applied to contracts between New York residents entered into and to be performed entirely within New York.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute but one and the same Agreement. Only one such counterpart need be produced to evidence the existence of this Agreement.

20. Headings. The headings of the sections of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

21. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, written and oral, between the parties with respect to the subject matter of this Agreement; provided, however, that this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation, Bylaws, the Code and any other applicable law, and shall not be deemed a substitute therefor, and does not diminish or abrogate any rights of Indemnitee thereunder.

Exhibit 10.16

In Witness Whereof, the parties hereto have entered into this Agreement effective as of the date first above written.

COMPANY

By: _____
Name: _____
Title: _____

INDEMNITEE

_____
Signature of Indemnitee

_____
Print or Type Name of Indemnitee