

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERICAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED OF**

IMPOPHARMA INC.

**MOTION UNDER SECTIONS 64.1, 64.2 AND 183 OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c.B-3, AS AMENDED**

**MOTION RECORD
(Returnable on August 2, 2018)**

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A	Exhibit A - Copy of the Notice of Intention to Make a Proposal filed by Impopharma Inc. on July 25, 2018
B	Exhibit B - Copy of the Notice of Default issued by MidCap Financial Trust ("MidCap") to each of Impopharma Inc. and Impopharma US, Inc., dated July 12, 2018
C	Exhibit C - Copies of the Notices of Intention to Enforce Security pursuant to Section 244 of the Bankruptcy and Insolvency Act issued by MidCap to each of Impopharma Inc. and Impopharma US, Inc., dated July 12, 2018
D	Exhibit D - Copy of the Forbearance Agreement entered into between Impopharma Inc. and MidCap dated July 25, 2018
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I	Exhibit I - Copies of the draft Retention Contracts to be entered into between Impopharma Inc. and its designated key employees

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3	Draft Order

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

MOTION RECORD

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**ONTARIO
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**IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL
UNDER THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS
AMENDED OF**

IMPOPHARMA INC.

NOTICE OF MOTION

(Returnable August 2, 2018)

TO THE RESPONDENTS LISTED HEREIN:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following pages.

THIS MOTION will come on for a hearing before a judge presiding over the Commercial List on August 2, 2018, at 10 a.m. at the Court House at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS MOTION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyers or, where the Applicant do not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you and your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AN AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE MOTION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THIS HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO OPPOSE this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid Office.

Date

Issued by _____

Address of local office: 330
University Avenue
Toronto, Ontario

TO: THE ATTACHED SERVICE LIST

Estate / Court File No.32-2403547

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED OF
IMPOPHARMA INC.

SERVICE LIST
(As of JULY 25, 2018)

GENERAL	
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<p>RICHTER ADVISORY SERVICES INC. 181 Bay Street, Suite 3320 Bay Wellington Tower Toronto ON M5J 2T3</p> <p>Trustee</p>	<p>Duncan Lau – Vice president Tel: (416) 488.4027 Email: DLau@Richter.ca</p> <p>Paul van Eyk Tel: (416) 485.4592 Email: PvanEyk@Richter.ca</p> <p>BLG Bay Adelaide Centre, East Tower 22 Adelaide Street West Suite 3400 Toronto, ON, Canada M5H 4E3 Tel: 416.367.6000</p> <p>Christine Mason Tel: 416.367.6636 Email: CMason@blg.com</p> <p>Lawyer for Richter Advisory Services Inc.</p>
<p>MIDCAP FINANCIAL TRUST 67 Yonge Street, Suite 808 Toronto, ON M5E 1J8</p>	<p>DLA Piper(Canada) LLP Suite 6000, 1 First Canadian Place PO Box 367, 100 King St W Toronto, Ontario M5X 1E2</p> <p>Bruce Darlington Tel: 416 365 3529 Email: bruce.darlington@dlapiper.com</p> <p>Danny M. Nunes Tel: 416 365 3421 Email: danny.nunes@dlapiper.com</p> <p>Lawyer for Midcap Financial Trust</p>
<p>PARTIES WITH SECURITY INTERESTS REGISTERED AT THE PPSA</p>	
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<p>THE TORONTO-DOMINION BANK 1315 The Queensway Etobicoke (Ontario) M8Z 1S8</p>	<p>Ryan Avery Relationship Manager Tél: (905) 890-4110 Email: Ryan.avery@td.com</p>
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GOVERNMENT AGENCIES	
<p>CANADA REVENUE AGENCY C/O DEPARTMENT OF JUSTICE The Exchange Tower 130 King Street West, Suite 3400 Toronto, ON M5X 1K6</p>	<p>Diane Winters Attorney General of Canada Tel: (416) 973-3172 Fax: (416) 973-0809 Email: diane.winters@justice.gc.ca</p>
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<p>MINISTRY OF THE ATTORNEY GENERAL (ONTARIO) Legal Services Branch 11th Floor, 400 University Ave Toronto, ON M7A 1T7</p>	<p>David McCaskill Email: david.mccaskill@ontario.ca</p>

MOTION

1. THE APPLICANT MAKE AN MOTION FOR:

- (a) an order, substantially in the form attached hereto as Schedule "A", pursuant to, *inter alia*, sections 64.1, 64.2 and 183 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**"):
 - (i) abridging the time for delivery of this Notice of Motion and the Motion Record, if necessary;
 - (ii) extending the stay of proceedings resulting from the filing of the NOI to September 30, 2018;
 - (iii) approving the execution of a Forbearance Agreement entered into on July 25, 2018 between Impopharma ("**Impopharma**"), Impopharma US, Inc. ("**Impopharma US**") and MidCap Financial Trust ("**MidCap**");
 - (iv) approving the court-supervised sale investment solicitation process (the "**SISP**") set out in the affidavit of Theron E. Odlaug, dated July 26, 2018;
 - (v) granting a first priority charge on all of Impopharma's assets, property and undertaking (the "**Property**") in the amount of \$100,000, in favour of Richter Advisory Group Inc., in its capacity as trustee to the NOI (the "**Trustee**"), counsel to the Trustee and counsel to Impopharma (the "**Administration Charge**");
 - (vi) granting a second priority charge on the Property in the amount of \$75,000, in favour of the directors and officers of Impopharma (the "**D&O Charge**"); and
 - (vii) approving Impopharma's Key Employee Retention Plan (the "**KERP**") and granting a third priority charge on the Property in the amount of \$550,000, in favour of the key employees of Impopharma (the "**KERP Charge**"); and
 - (viii) sealing Impopharma's financial statements and the unredacted version of the KERP.
- (b) such other relief as this honourable Court may seem just.

THE GROUNDS FOR THIS MOTION ARE:

- (a) On July 25, 2018, Impopharma filed a Notice of Intention to Make a Proposal ("NOI") under section 50.4(1) of the BIA. Richter Advisory Group Inc. was appointed as Impopharma's proposal trustee (the "Trustee");
- (b) The filing of the NOI was made in a context where Impopharma was no longer in a position to meet its obligations as and when they became due;
- (c) On July 12, 2018, MidCap, in its capacity as administrative agent for Impopharma's lender MidCap Funding XIII Trust, made a formal demand from Impopharma and Impopharma US for the payment of all amounts due and owing pursuant to a *Credit and Security Agreement* dated July 8, 2016 (the "Notice of Default"), which demand Impopharma was unable to meet;
- (d) This Notice of Default was accompanied by *Notices of Intention to Enforce Security* issued by MidCap to each Impopharma and Impopharma US pursuant to Section 244 of the BIA, advising that MidCap intended to enforce its security against substantially all of Impopharma and Impopharma US's present and after-acquired personal property;
- (e) As a result, Impopharma, together with its legal and financial advisors, initiated without prejudice discussions with MidCap and its counsel, in order to discuss a potential action plan (the "Action Plan") which would potentially allow the maximization of Impopharma's assets, for the benefit of its creditors and other stakeholders;
- (f) Pursuant to the Action Plan, Impopharma would initiate, with the assistance of the Trustee, a SISP with a view of selling its assets under the supervision of this Court;
- (g) On July 20, 2018, Impopharma and Midcap reached an agreement on the Action Plan, including on the terms and conditions of the SISP;
- (h) On July 25, 2018, prior to filing the NOI, Impopharma and Impopharma US entered into the Forbearance Agreement with MidCap pursuant to which MidCap agreed to forbear from enforcing its rights as secured creditor against Impopharma, and to support the conduct of the SISP in the context of these proceedings;
- (i) Impopharma believes that in light of its financial situation, the concurrent filing of the NOI with the initiation of the SISP will allow it to preserve the value of its business and assets as a whole, while minimizing any disruption which may occur during the completion of the SISP, which, in turn, will ensure the maximization of creditor recovery. Impopharma further believes that in the event of a liquidation under a bankruptcy scenario where all operations would

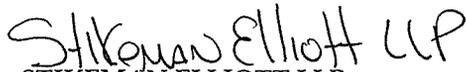
be terminated, or even in the event of a sale or liquidation by a third party receiver in control of Impopharma's business and operations, the value of its assets would be substantially reduced, while potentially increasing the cost of realization;

- (j) It is believed that the conduct of the SISP in the context of these proposal proceedings (as opposed to a forced sale or sale by a receiver) constitutes the best option for the realization of its assets and the maximization of their value for the benefit of its stakeholders;
- (k) Since Impopharma will require the participation of its directors and officers during the proposed liquidation process in order effect a successful transaction in respect of its assets, it proposes to indemnify such directors and officers and to secure such indemnity by way of the D&O Charge;
- (l) Similarly, Impopharma will also require the participation of the Trustee, the Trustee's legal counsel and its own legal counsel to assist in these proposal proceedings and it proposes to secure the payment of their fees by way of the Administration Charge;
- (m) Finally, since Impopharma will also require the continued services of 14 key employees in order to enhance the chances of successfully completing the SISP, Impopharma will also seek the ratification by this Court of its KERP, whose purpose is to incentivize these key employees to remain under the employment of Impopharma during the SISP, and the approval of the KERP Charge to secure the payments owed under the KERP;
- (n) Those further grounds as set out in the affidavit of Theron E. Odlaug sworn July 26, 2018, and the exhibits thereto;
- (o) Sections 64.1, 64.2 and 183 of the BIA;
- (p) Such other grounds as counsel may advise and this honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

- (a) the Affidavit of Theron E. Odlaug sworn July 26, 2018 and the Exhibits referred to therein; and
- (b) the first report of the Trustee;
- (c) such further and other material as counsel may advise and this honourable Court may permit.

July 26, 2018


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Proceeding commenced at Toronto

NOTICE OF MOTION

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IMPOPHARMA INC.

AFFIDAVIT OF THERON E. ODLAUG
(sworn July 26, 2018)

I, THERON E. ODLAUG, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Executive Chairman of Impopharma Inc. ("Impopharma"), and have been employed in this capacity since February 2017, and as such, I am familiar with the business and affairs of Impopharma.

2. Except as otherwise indicated herein, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or my opinion based upon my experience, knowledge and information concerning the operations of Impopharma and the industry in which it operates its business. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, do believe it to be true.

BACKGROUND

3. Impopharma was formed under the Ontario *Business Corporations Act*, and has its principle place of business located at 255 Spinnaker Way, Concord, Ontario, Canada.

4. On July 25, 2018, Impopharma filed a *Notice of Intention to Make a Proposal* (the "NOI") pursuant to section 50.4 of the *Bankruptcy and Insolvency Act* (the "BIA"), and appointed Richter Advisory Services Inc. ("Richter") as its NOI trustee (the "Trustee"). A copy of the NOI is attached hereto as **Exhibit A**.

5. The filing of the NOI was made in a context where on or about July 12, 2018, Impopharma and its US affiliate, Impopharma US, Inc. ("Impopharma US"), received from MidCap Financial Trust ("MidCap" or the "Agent"), in its capacity as administrative agent for MidCap Funding XIII Trust (the "Lender") under a *Credit and Security Agreement* dated July 8, 2016 (the "Credit Agreement"), a Notice of Default (the "Notice of Default") advising that, *inter alia*, a formal demand was made by MidCap for the payment of all amounts due and owing pursuant to the Credit Agreement, including the principal monies with interest, and all other amounts owing pursuant thereto. A copy of the Notice of Default is attached hereto as **Exhibit B**.

6. Attached to the Notice of Default were *Notices of Intention to Enforce Security* issued by MidCap to each of Impopharma and Impopharma US pursuant to Section 244 of the BIA (collectively, the "244 Notices"), advising that MidCap, in its capacity as administrative agent under the Credit Agreement, intended to enforce its security against substantially all of Impopharma's and Impopharma US' present and after-acquired personal property. A copy of the 244 Notices are attached hereto as **Exhibit C**.

7. Following the issuance of the Notice of Default and the 244 Notices, Impopharma, together with its legal and financial advisors, initiated without prejudice discussions with MidCap and its counsel, in order to discuss a potential action plan (the "Action Plan") which

would potentially allow the maximization of Impopharma's assets, for the benefit of its creditors and other stakeholders.

8. Pursuant to the Action Plan, Impopharma would initiate, with the assistance of the Trustee, a sale and investment solicitation process (the "SISP") with a view of selling its assets under the supervision of this Court.

9. On July 20, 2018, Impopharma and Midcap reached an agreement on the Action Plan, including on the terms and conditions of the SISP.

10. Accordingly, on July 25, 2018, after discussions and negotiations, Impopharma and MidCap executed a Forbearance Agreement (the "Forbearance Agreement") pursuant to which the latter agreed, subject to the terms and conditions set forth therein, to forbear from enforcing its rights as secured creditor against Impopharma, and to support the conduct of the SISP in the context of these proceedings. A copy of the Forbearance Agreement is attached hereto as Exhibit D.

11. In accordance with the terms and conditions of the Forbearance Agreement, Impopharma filed the NOI on July 25, 2018, in order to set the wheels in motion in relation with the SISP.

12. As will be further discussed below, Impopharma believes the conduct of the SISP in the context of these proceedings constitutes, in the circumstances, the better alternative for the maximization and sale of its assets. Indeed, Impopharma believes that the concurrent filing of the NOI with the initiation of the SISP will allow it to preserve the value of its business and assets as a whole, while minimizing any disruption which may occur during the completion of the SISP, which, in turn, will ensure the maximization of creditor recovery.

13. In contrast, in the event of a liquidation under a bankruptcy scenario where all operations would be terminated, or even in the event of a sale or liquidation by a third party receiver in control of Impopharma's business and operations, Impopharma believes that the value of its assets would be substantially reduced, while potentially increasing the cost of realization.

14. Impopharma believes that completion of the SISP in the context of the present proceedings will yield better results than any conceivable "go-dark" scenario or sale by a receiver. Moreover, if circumstances permit, and depending on the result of the SISP, Impopharma may also consider, in due course, the filing of a proposal to its creditors pursuant to the BIA.

15. For the reasons further described herein, Impopharma seeks, by way of its Application in support of which this Affidavit is filed, the issuance by the Court of an order ratifying or approving, as the case may be:

- (a) the extension of the stay of proceedings resulting from the filing of the NOI until September 30, 2018;
- (b) the Forbearance Agreement;
- (c) the SISP;
- (d) the Administrative Charge (as defined below);
- (e) the D&O Charge (as defined below);
- (f) the KERP and the KERP Charge (as such terms are defined below); and

- (g) the sealing of the confidential exhibits which will be filed in support of this Affidavit.

16. In light of the execution of the Forbearance Agreement, Impopharma has been advised by MidCap that it does not oppose the relief sought above.

2. DESCRIPTION OF IMPOPHARMA'S BUSINESS AND AFFAIRS

2.1. Overview

17. Founded in 1996 by Hanna Piskorz and Harold Wulffhart, Impopharma is a company based in Concord, Ontario, which operates as a research and development pharmaceutical company that develops nasal and pulmonary products.

18. Over the past 20 years, Impopharma has grown its operations which were initially conducted from a 150 square feet single office, to now being conducted in a 15,000 square feet facility in Concord, Ontario, comprised of a laboratory, a small pilot manufacturing, document storage, sample storage and office space that staffs all of its employees.

19. Over the years, Impopharma has acted as an extension of its clients' laboratory, including Top 20 global Rx pharma companies, and has equipped itself with highly specialized equipment, key scientists as well as expertise in many product development strategies in line with current regulatory expectations.

20. Today, as part of its product offering, Impopharma offers dry powder inhalers, metered nasal sprays, metered sublingual sprays, injectable products, ophthalmic products, and oral products. It also provides topical products that include creams, gels, solutions, and suspensions, as well as otic products.

21. In addition to such products, Impopharma also offers various services that include testing of branded products; formulation development of generic and innovative products; product development; method development and validation; stability studies; characterization studies; in-vitro bioequivalence studies; production process development and scale-up manufacturing; production of stability/clinical batches; clinical trial management support; technology transfer; regulatory support for FDA, TPD, EMEA, and MCA submissions; and delivery device design and development, including blinding devices.

22. As at the date of this Affidavit:

(a) Impopharma's management is comprised of the following persons:

- (i) Dr. Theron (Ted) E. Odlaug, Ph.D. (Executive Chairman);
- (ii) Ms. Vien Brewster (Chief Financial Officer);
- (iii) Mr. David J. Mayers (Chief Operating Officer); and
- (iv) Dr. David Brown, Ph.D. (Senior Director of R&D).

(b) Impopharma's board of directors is comprised of the following persons:

- (i) David Mayers
- (ii) Todd Sone
- (iii) Wayne Kreppner
- (iv) Harold Wulffart

23. Other than a bank account, Impopharma US, which is an affiliate of Impopharma, has no operations of its own, and has no material assets.

2.2. Employees

24. As at July 23, 2018, Impopharma employed 30 non-unionized employees, of which 29 are employed full-time and 1 is employed part-time. 3 of these employees are corporate

personnel and 27 work in research and development at Impopharma's facility located at 255 Spinnaker Way.

25. All of Impopharma's employees are paid on a semi-monthly basis, and Impopharma has been and will remain current in the payment of salaries to its employees. Deductions from employee salaries are also made and remitted, as required, to the appropriate governmental authorities.

26. For the fiscal years 2016 and 2017, Impopharma's gross payroll obligations amounted to approximately \$4.342 million and \$3.585 million, respectively.

3. ASSETS

27. As at June 30, 2018, the principal assets of Impopharma essentially consisted of the following:

Nature	Estimated Book Value
Inventory	\$nil
Equipment	\$1.247 million
Receivables	\$1.081 million ¹
Prepaid Expenses	\$18,000
Short Term Deposit (Required for Bank	\$0.22 million

¹ This amount includes a Scientific Research and Experimental Development tax incentive claim (the "SRED Claim") in the approximate amount of \$750,000, which, in accordance with the Forbearance Agreement, Impopharma committed to pay to MidCap upon reception thereof, up to the amount then owing to MidCap under the Credit Agreement.

Facilities)	
Total:	\$2.566 million

4. **INDEBTEDNESS**

28. As at July 23, 2018, Impopharma's total indebtedness to its creditors amounted to an aggregate sum of approximately \$4.009 million, as appears from the List of Creditors annexed to the NOI (Exhibit A).

29. Of that amount, approximately US\$1,950,000² was owed to MidCap, which is the only creditor of Impopharma with security over all or substantially all of its assets, undertakings and properties, other than equipment lessors.

30. A more detailed description of Impopharma's indebtedness is provided below.

4.1. **Impopharma's Indebtedness to MidCap**

31. On July 8, 2016, Impopharma and Impopharma US, as borrowers, entered into the Credit Agreement with MidCap, as administrative agent to the Lender. A copy of the Credit Agreement is attached hereto as Exhibit E.

32. Pursuant to the Credit Agreement, a credit facility of up to US\$7,000,000 was made available by the Lender to Impopharma and Impopharma US, with a maturity date of January 1, 2020.

33. The obligations of Impopharma under the Credit Agreement are stated to be secured by certain financing documents, including a General Security Agreement dated as of July 8, 2018

² After payment of an amount of US\$1,775,000, in accordance with the Forbearance Agreement.

(the "GSA"), and a Pledge Agreement dated as of July 8, 2016 (the "Pledge Agreement", together with the GSA, the "MidCap Security"). Copies of the GSA and Pledge Agreement are attached hereto as Exhibit F and G, respectively.

34. On July 12, 2018, MidCap, through its counsel, issued to Impopharma and Impopharma US the Notice of Default and the 244 Notices advising them that in light of the serious decline in their business operations, liquidity for the continued funding of their business operations was not sustainable, resulting in a "Material Adverse Change", as defined in the Credit Agreement, and therefore resulting in the occurrence of an "Event of Default" thereunder as well as under the MidCap Security.

35. Pursuant to the Notice of Default, MidCap, through its counsel, formally demanded the full payment of all amounts owing under the Credit Agreement, with an immediate paydown of US\$2,100,000 by no later than Monday, July 16, 2018.

36. As previously mentioned, on July 25, 2018, after discussions and negotiations, Impopharma and MidCap executed the Forbearance Agreement pursuant to which the latter agreed, subject to the terms and conditions set forth therein, to forbear from enforcing its rights as secured creditor against Impopharma, and to support the conduct of the SISP in the context of these proceedings.

37. On July 25, 2018, in accordance with the terms and conditions set forth in the Forbearance Agreement, Impopharma made a US\$1,750,000 payment to MidCap, thereby reducing the amount owed under the Credit Agreement to approximately US \$1,950,000.

4.2. Suppliers and other creditors

38. As at July 23, 2018, an amount of approximately \$359,600 was owing by Impopharma to its suppliers.

4.3. Employee Obligations

39. As at July 23, 2018, the gross accrued normal pay obligations of Impopharma totaled approximately \$47,325.

40. As mentioned, normal pay obligations are paid on a semi-monthly basis, with the next pay day being July 31, 2018.

41. Impopharma provides vacation time to its employees as a paid time-off benefit. The duration of vacation benefits varies based on the employee's position and seniority. The estimated amount of accrued, unused vacation time as at July 20, 2018 was approximately \$91,905.

42. Impopharma maintains no employee pension or retirement plans.

5. FINANCIAL DIFFICULTIES

43. Over the past few years, several factors have materially contributed to the deterioration of Impopharma's financial situation, and have rendered its economic environment very challenging.

44. For instance, in the past year, Impopharma's revenues have decreased due to a variety of factors, including, *inter alia*, various changes in the competitive landscape, combined with delays incurred in connection with certain projects in which Impopharma was involved in.

45. Despite the implementation of various cost-cutting measures implemented, Impopharma has been unable to find its way back to profitability.

46. For the fiscal years ended December 31, 2016, and December 31, 2017, Impopharma recorded a total comprehensive net loss of approximately US\$7.251 million and US\$5.608 million, respectively, as will appear from a copy of Impopharma's audited financial statements for those years, which Impopharma intends to file *under seal* as Exhibit H to this Affidavit.

47. As of the date hereof, in light of MidCap's demand for repayment, as set forth in the Notice of Default, Impopharma is no longer able to continue its operations and to meet its obligations in the ordinary course as they become due, and, as such, is become insolvent.

48. A copy of Impopharma's cash flow forecast until September 28, 2018 (i.e. the expected duration of the SISP) has been attached as Schedule D to the Forbearance Agreement Exhibit D).

49. In light of its financial situation, and as previously discussed, Impopharma believes that the conduct of the SISP, as further described below, constitutes, in the circumstances, the better alternative for the maximization and sale of its assets.

6. THE SISP

50. In order to maximize the value of its assets, Impopharma, with the assistance of the Trustee, intends to conduct the SISP in accordance with the following milestones:

Steps	Milestones	Indicative Timeframe (# of weeks from the approval of the SISP by the Court)
1.	Preparation of solicitation materials (teaser/confidential information memorandum)	1-2
2.	Population of a data room with supporting data covering substantially all of Impopharma's assets	1-2
3.	Market opportunities to interested parties and execute non-disclosure agreements with prospective purchasers / investors	1-2
4.	Evaluation of opportunity by prospective purchasers / investors	1-6
5.	Receipt of binding Letters of Intent ("LOIs")	By August 30, 2018
6.	Consideration of LOIs and selection of one or more purchasers / investors to proceed with	7-8
7.	Execution of Definitive Agreement (closing to be subject only to applicable court approval and regulatory approvals; i.e. no diligence or financing conditions)	By September 15, 2018
8.	Court Approval	9-10
9.	Regulatory approval - will depend on structure of transaction(s) and identity of purchaser(s) / investor(s)	9-10
10.	Closing and post-closing matters	By September 30, 2018

51. Impopharma intends to report back to the Court on the progress of the SISP on or before its second stay extension request.

7. RELIEF SOUGHT

7.1. Approval of the SISP

52. The SISP is designed to maximize the value of Impopharma's assets and creditor recovery, and is the result of discussions between Impopharma, its advisors, the Trustee and MidCap.

53. Although I was informed that the BIA does not require an insolvent debtor to have a sale process approved by the Court, Impopharma wishes nevertheless to be transparent with the court, as well as with its creditors and stakeholders, so that the path going forward is made clear to interested or potentially interested parties.

54. The SISP will provide a means for testing the market, gauging interest in Impopharma and/or its assets and determining whether a transaction is available that is advantageous to Impopharma and its stakeholders in comparison to a bankruptcy liquidation or sale by a receiver.

55. Given the nature of its assets and its limited liquidities, the proposed SISP is reasonable under the circumstances, and should therefore be approved by this Court.

56. Impopharma understands that both the Trustee and MidCap are supportive of the SISP, as well as the proposed milestones described above.

7.2. Administration Charges

57. As part of its application, Impopharma also seeks a charge (the "Administration Charge") over all of Impopharma's assets, property and undertaking (the "Property") in the amount of \$100,000, in order to secure the full and complete payment of the reasonable fees and expenses of Impopharma's legal advisors, the Trustee and its advisors, each of which has played and will continue to play a critical role in these proceedings.

58. Impopharma requests that the Administration Charge rank in priority to the claims of all secured and unsecured creditors, including the D&O Charge and the KERP Charge (as such

terms are described below), as well as the MidCap Security (except however where the MidCap Security attaches to the proceeds to be received by Impopharma in respect of the SRED Claim).

59. Once again, Impopharma understands that both the Trustee and MidCap are supportive of the Administration Charge.

7.3. Director's Charge

60. In order to continue to carry on business during these proceedings and in order to complete the SISP, Impopharma requires the active and committed involvement and continued participation of Impopharma's directors and officers, who manage Impopharma's business, commercial activities and internal affairs (collectively, the "D&Os").

61. Considering the risk to which the D&Os may be exposed to in assisting Impopharma during the SISP, the D&Os have required Impopharma to indemnify them in respect of all liabilities which they may incur in the context of their employment after the filing of these proceedings.

62. While Impopharma currently maintains an insurance policy for its D&Os, such policy is scheduled to expire on August 14, 2018. As at the date of this Affidavit, Impopharma has not yet been in a position to confirm the renewal of its current D&O insurance policy.

63. Accordingly, Impopharma seeks a Court-ordered charge (the "D&O Charge") in the amount of \$75,000 over the Property to indemnify the D&Os in respect of all claims relating to any obligations or liabilities they may incur after the filing of the NOI in relation to their respective capacities as directors or officers, except where such obligations or liabilities were

incurred as a result of such directors' or officers' gross negligence, willful misconduct or gross or intentional fault.

64. Impopharma believes that the D&O Charge is reasonable and adequate given the nature of its business and operations, its current workforce and the corresponding potential exposure of the D&Os.

65. Absent a D&O Charge, Impopharma is concerned that the D&Os may resign, which would, in all likelihood, jeopardize the continuation of Impopharma's operations, as well as the completion of the SISP, to the detriment of its creditors and stakeholders.

66. Impopharma requests that the D&O Charge rank after the Administration Charge, but in priority to the claims of all other secured and unsecured creditors, including the KERP Charge and the MidCap Security (except however where the MidCap Security attaches to the proceeds to be received by Impopharma in respect of the SRED Claim).

67. Once again, Impopharma understands that both the Trustee and MidCap are supportive of the D&O Charge.

7.4. KERP Charge

68. As part of its strategic review, Impopharma has determined that the services of 16 key employees and consultants (the "**Key Employees**") is critical to the implementation of the SISP and eventually, if circumstances permit, the filing of a proposal. Of these Key Employees, 9 had already signed retention agreements with Impopharma.

69. In order to incentivize these Key Employees to remain under Impopharma's employment during these proceedings and to work toward certain strategic objectives in

connection with the successful completion of the SISP and the potential subsequent filing of a proposal by Impopharma to its creditors, Impopharma intends to enter into new retention contracts (the "Retention Contracts"), which will provide for various retention payments (the "Retention Payments") to these Key Employees, payable upon the occurrence of various milestones. Copies of the draft Retention Contracts are attached hereto as Exhibit I.

70. Impopharma has prepared a summary table (the "KERP Table") listing all of the Key Employees, as well as the retention amount payable to them pursuant to the Retention Contracts, a copy of which will be filed by Impopharma, under seal, as Exhibit J to this Affidavit. Impopharma believes that the disclosure of the information set forth in the KERP Table may cause harm to the Key Employees, by disclosing personal, confidential and proprietary information regarding these Key Employees and their compensation and that such disclosure could provide competitors with the necessary information to attempt to secure employment of these Key Employees.

71. The Key Employees have been designated based upon, *inter alia*, their position, experience, in-depth knowledge of Impopharma's assets, as well as its business operations and financial situation, whereas the Retention Payment will be a function of either a percentage of their base salary, or a percentage of the value of the transaction(s), which is or are expected to close as part of the SISP.

72. Each of the Key Employee's participation during this challenging period will be critical to assist Impopharma and the Trustee in, *inter alia*, preparing cash-flow forecasts, managing employee payrolls, responding and reporting to creditors (including MidCap) and potential

purchasers' enquiries and ensuring that Impopharma continues to maintain a certain level of operations to generate the necessary revenues during the SISP.

73. In order to secure the full and complete payment of Impopharma's obligations under the KERPs, Impopharma also seeks a \$550,000 charge over Impopharma's Property (the "KERP Charge"), which is consistent with the amounts which Impopharma could be called upon to pay in accordance with the Retention Contracts.

74. Impopharma will request that the KERP Charge rank after the Administration Charge and the D&O Charge, but in priority to the claims of all other secured and unsecured creditors, including the MidCap Security (except where: (a) the MidCap Security attaches to the proceeds to be received by Impopharma in respect of the SRED Claim or (b) where the amount owed and secured by the KERP Charge exceeds \$360,000 (less any payment made to any of the beneficiaries of the KERP Charge in accordance with the cash-flow projections set in Schedule D of the Forbearance Agreement), in which case any payment made under the Retention Contracts in excess of such amount shall be subordinated to the payment of the amounts owing to MidCap under the Credit Agreement).

75. Once again, Impopharma understands that both the Trustee and MidCap are supportive of the KERP Charge.

7.5. Sealing Order

76. Finally, as previously discussed, as part of its Motion, Impopharma will seek the sealing of Exhibit H (2016 and 2017 audited financial statements) and of Exhibit J (KERP Table), both of which will be filed separately from this Affidavit.

8. CONCLUSIONS

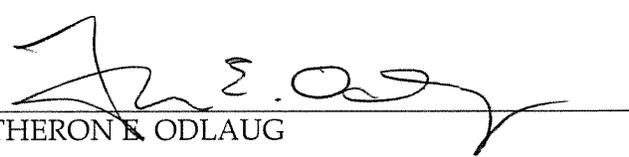
77. For the reasons set forth above, I believe it is both appropriate and necessary that the relief being sought be granted. With such relief, Impopharma will be able to conduct the SISP with a view to maximize the value of its business and assets for the benefit of its creditors and other stakeholders.

78. This Affidavit is sworn in support of a motion for an order approving the Forbearance Agreement, the SISP, certain priority charges further described herein and certain other ancillary relief, and for no other or improper purpose.

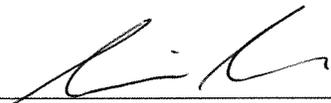
SWORN before me in the city of Toronto,)
on this 26 day of July, 2018.)



Sanja Sopic)


THERON E. ODLAUG)

This is Exhibit "A" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.



A Commissioner for Taking Affidavits in
and for the Province of Ontario



Industrie Canada

Industry Canada

Bureau du surintendant
des faillites Canada

Office of the Superintendent
of Bankruptcy Canada

District de : Ontario
No division : 07 - Hamilton
No cour : 32-2403547
No dossier : 32-2403547

Dans l'affaire de l'avis d'intention de faire une
proposition de :

Impopharma Inc.
Personne insolvable

**RICHTER ADVISORY GROUP INC / RICHTER GROUPE
CONSEI**
Syndic autorisé en insolvabilité

Date de l'avis d'intention : 25 juillet 2018

CERTIFICAT DE DÉPÔT D'UN AVIS D'INTENTION DE FAIRE UNE PROPOSITION
paragraphe 50.4(1)

Je soussigné, séquestre officiel pour ce district de faillite, certifie par les présentes que la personne insolvable susmentionnée a déposé un avis d'intention de faire une proposition en vertu du paragraphe 50.4(1) de la *Loi sur la faillite et l'insolvabilité*.

Conformément au paragraphe 69(1) de la Loi, toutes les procédures contre la personne insolvable susmentionnée sont suspendues à compter de la date du dépôt de l'avis d'intention.

Date: 26 juillet 2018, 08:57

E-File/Dépôt Electronique

Séquestre officiel

Federal Building - Hamilton, 55 Bay Street N, 9th Floor, Hamilton Canada, L8R3P7, (877)376-9902

Canada

District of:
Division No. -
Court No.
Estate No.

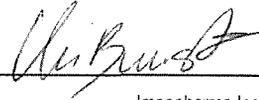
- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the matter of the proposal of
Impopharma Inc.
of the City of Concord
in the Province of Ontario

Take notice that:

1. I, Impopharma Inc., an insolvent person, state, pursuant to subsection 50.4(1) of the Act, that I intend to make a proposal to my creditors.
2. Richter Advisory Group Inc. of 181 Bay Street, 33rd Floor, Toronto, ON, M5J 2T3, a licensed trustee, has consented to act as trustee under the proposal. A copy of the consent is attached.
3. A list of the names of the known creditors with claims of \$250 or more and the amounts of their claims is also attached.
4. Pursuant to section 69 of the Act, all proceedings against me are stayed as of the date of filing of this notice with the official receiver in my locality.

Dated at the City of Toronto in the Province of Ontario, this 25th day of July 2018.



Impopharma Inc.
Insolvent Person

To be completed by Official Receiver:

Filing Date

Official Receiver

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -
 Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of
 Impopharma Inc.
 of the City of Concord
 in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
6581633 CANADA LTD.	116 EASTVALE DRIVE MARKHAM ON L3S 4S6		960.50
AGILENT TECHNOLOGIES CANADA INC.	P.O.BOX 4551, POSTAL STATION A TORONTO ON M5W 4R8		6,960.64
ALPHA CONTROLS & INSTURMENTATION	6-361 STEELCSE ROAD W. MARKHAM ON L3R 3V8		1,576.35
ANSYS RESEARCH LABORATOIRES *	OPP- HDFC BANK VIKRAM PLAZA, NR VISHAWKARMA TAMPLE 01-THIRD FLOOR CERAMIC CENTER GOTA RAILWAY BRIDGE, GOTA AHMEDABAD, GUJARAT 382481 INDIA		1,800.00
CINTAS CANADA LIMITED	1110 FLINT ROAD TORONTO ON M3J 2J5		288.00
CINTAS CANADA LIMITED (G&K)	DEPT. 400004 P.O. BOX 4372 STN A TORONTO ON M5W 0J2		422.10
EXOVA CANADA INC.	POSTAL STATION A C/O T10014, P.O. BOX 10014 TORONTO ON M5W 2B1		644.10
FEDEX TRADE NETWORKS CANADA INC. *	C/O BANK OF AMERICA BOX 916200 P.O. BOX 4090 STATION A TORONTO ON M5W 0E9		275.81
INTERTEK ME..BOURN	ACADEMY PLACE 1-9 BROOK STREET PO BOX 11167 BRENTWOOD CM14 9LA GBR		16,102.55
LIFE SCIENCE LEGAL LLC *	214 SOUTH SPRING ST. INDEPENDENCE MO 64050-3647 USA		3,022.50
MAPI LIFE SCIENCES CANADA INC.	4 INNOVATION DRIVE DUNDAS DUNDAS ON L9H 7P3		957.39
MCKESSON SPECIALIZED DISTRIBUTION INC.	1215 NORTH SERVICE RD. WEST OAKVILLE ON L6M 2W2		1,695.00

District of:
 Division No. -
 Court No.
 Estate No.

- FORM 33 -
 Notice of Intention To Make a Proposal
 (Subsection 50.4(1) of the Act)

In the matter of the proposal of
 Impopharma Inc.
 of the City of Concord
 in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
MEXICHEM FLUOR INC. *	STATION A P.O. BOX 1995 TORONTO ON M5W 3N9		14,299.25
MIDCAP FINANCIAL TRUST *	C/O MIDCAP FINANCIAL SERVICES, LCC, AS SERVICER 200-7255 WOODMONT AVE. BETHESDA MD 201 814 USA		3,700,000.04
NANOPHARMA LTD.	COEDKERNEW CAVENDISH HOUSE, HAZEL DRIVE NEWPORT 1 WA7 1NU UK		58,512.38
NEULAND LABORATORIES INC. *	8-2 120/113, Rd No. 2 Sanathinor Prk, A Block, Ground Floor Banjara Hills, Hyderabad, AP 500034 INDIA		750.00
NUCRO TECHNICS	2000 ELLESMERE ROAD UNIT 16 SCARBOROUGH ON M1H 2W4		603.42
PAWEL RADOMSKI *	117 JOHN WEST WAY AURORA ON L4G 7E2		3,051.00
PHARMASERVE (NORTH WEST) LTD	ASTMOOR INDUSTRIAL ESTATE 9 ARKWRIGHT ROAD RUNCORN WA7 1NU ENGLAND		59,381.90
POWER STREAM			3,717.28
RPC FORMATEC GMBH	STOCKHEIMER STRABE 30 MELLRICHSTADT 97638 GERMANY		122,719.08
SCIGIENE CORP.	P. O. BOX 25024 RPO MORNINGSIDE SCARBOROUGH ON M1E 0A7		1,111.92
SIGMA ALDRICH CANADA CO.	LBX# T6226 P.O. BOX 6100, POSTAL STATION F TORONTO, ON M4Y 2Z2 TORONTO ON M4Y 2Z2		1,028.13
TD VISA *	CORPORATE PAYMENT SYSTEMS 120 ADELAIDE ST. W. P.O. BOX 2300 TORONTO ON M5H 1T1		525.92

District of:
Division No. -
Court No.
Estate No.

- FORM 33 -
Notice of Intention To Make a Proposal
(Subsection 50.4(1) of the Act)

In the matter of the proposal of
Impopharma Inc.
of the City of Concord
in the Province of Ontario

List of Creditors with claims of \$250 or more.			
Creditor	Address	Account#	Claim Amount
U.S. PHARMACOPOLITICAL CONVENTION *	ACCOUNTS RECEIVABLE 12801 TWINBROOK PARKWAY ROCKVILLE MD 20852-1790 USA		1,300.00
WORKPLACE SAFETY & INSURANCE BOARD	P.O. BOX 4115, STATION A TORONTO ON M5W 2V3		499.55
Z US EXCHANGE RATE (1.3164)			6,885.60
Total			4,009,090.41

Impopharma Inc.
Insolvent Person



-- ESTATE INFORMATION SUMMARY --

I. COMPLETE THE FOLLOWING IN ALL CASES									
PROCEEDING: <input type="checkbox"/> Assignment <input type="checkbox"/> Receivership <input type="checkbox"/> Bankruptcy Order <input checked="" type="checkbox"/> Proposal					<input type="checkbox"/> Individual		<input checked="" type="checkbox"/> Corporation		<input type="checkbox"/> Income Trust
Estate Name Impopharma Inc.				Occupation			Language <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other Specify		
Ind. Date of Birth	D	M	Y	Previous or current BIA proceeding? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, enter estate number(s)		Previous bankruptcy <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If yes, how many? 0
Address (Street No. and Apt No.) 255 Spinnaker Way, unit 6							Indicate if receivership <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
City Concord		Province ON		Postal Code L6K 4J1		Home Telephone no. () - -		Work Telephone no. (905) 760-0232	
E-mail Address (if any)			Consumer debts only? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		100.00 % of the total debt is Business		The debtor resides or has carried on business at the above address since: D M Y 01-01-1997		
Highest level of education completed by bankrupt/debtor: (for statistical purposes only)									
<input type="checkbox"/> 0-8 years	<input type="checkbox"/> Some high school	<input type="checkbox"/> high school graduate	<input type="checkbox"/> some post-secondary	<input type="checkbox"/> post-secondary certificate or diploma	<input type="checkbox"/> university degree	<input type="checkbox"/> refuses to answer or doesn't know			
II - COMPLETE THE FOLLOWING IF THE DEBTOR HAS GUARANTEED THE DEBTS OF ANOTHER PERSON									<input checked="" type="checkbox"/> N/A
III - COMPLETE THE FOLLOWING IF THE DEBTOR WAS PREVIOUSLY OR IS PRESENTLY IN BUSINESS									<input type="checkbox"/> N/A
Trade name(s) if different from the estate name		Place of Business			Nature of Business		Corporation, partnership or sole proprietorship		
Impopharma Inc.		255 Spinnaker Way, Unit #6 Concord ON L4K 4J1			Pharmaceutical development		Corporation		
Names of the partners if a partnership:									
During the past 12 months, what was the maximum number of employees that you employed? 32					How long have you been in operation under this current legal name? 258 Month(s)				
IV - COMPLETE THE FOLLOWING IF THE DEBTOR IS A CORPORATION									<input type="checkbox"/> N/A
Are the shares of the corporation publicly traded? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					Federal Charter Number <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Names of the corporate officers Vien Brewster, Theron E. Odlaug, David J. Mayers									
Name of person to be examined Vien Brewster				Title Officer of the Bankrupt Co		Phone Number (905) 760-0232			
Address 255 Spinnaker Way, unit 6									
City Concord		Province ON		Postal Code L6K 4J1		Language <input checked="" type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Other specify			
During the past 12 months, what was the maximum number of employees that you employed? 32					How long have you been in operation under this current legal name? 258 Month(s)				
V - TO BE COMPLETED WHEN FILING A CONSUMER PROPOSAL OR AMENDED CONSUMER PROPOSAL									<input checked="" type="checkbox"/> N/A
VI - TO BE COMPLETED AND SIGNED BY THE TRUSTEE IN ALL CASES									
Creditors Meeting Suggested Time & Place			D M Y		Time		Location		
TRUSTEE APPOINTMENT Name & Licence number of the trustee or, if a Corporate Trustee, the name & Licence number of the person responsible for the administration of the estate.							Richter Advisory Group Inc., Paul van Eyk, CPA, IFA, CIRP, LIT, 3218 Licence number 3218		
Request for an investigation under the Debtor Compliance Referral Program				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, provide reasons for referral			
A possible conflict of interest situation exists:				<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		If yes, explain			
Indemnification:				<input checked="" type="checkbox"/> N/A		<input type="checkbox"/> Deposit		<input type="checkbox"/> Guarantee Name of depositor or guarantor	
Amount or extent of indemnity \$ 0.00				<input type="checkbox"/> Trustee absent when file submitted Amended summary to follow			Signature of Trustee		

- Proposal Consent -
In the matter of the proposal of
Impopharma Inc.
of the City of Concord
in the Province of Ontario

To whom it may concern,

This is to advise that we hereby consent to act as trustee under the Bankruptcy and Insolvency Act for the proposal of Impopharma Inc..

Dated at the City of Toronto in the Province of Ontario, this 25th day of July 2018.

Richter Advisory Group Inc. - Licensed Insolvency Trustee

Per:



Paul van Eyk, CPA, IFA, CIRP, LIT - Licensed Insolvency Trustee
181 Bay Street, 33rd Floor
Toronto ON M5J 2T3
Phone: (416) 488-2345 Fax: (416) 488-3765

This is Exhibit "B" referred to in the Affidavit of Theron E. Odlag made before me on this 26 day of July, 2018.



A Commissioner for Taking Affidavits in
and for the Province of Ontario



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
www.dlapiper.com

Bruce Darlington
bruce.darlington@dlapiper.com
T 416.365.3529
F 416.369.5210

July 12, 2018

FILE NUMBER: 85075-00017

DELIVERED BY E-MAIL

Impopharma Inc
Impopharma US, Inc.
255 Spinnaker Way, Unit 6
Concord, ON L4K 4J1

Dear Sirs/Mesdames:

Re: Outstanding indebtedness of Impopharma Inc. and Impopharma US, Inc. (collectively, "Borrowers") to MidCap Financial Trust, as administrative agent ("Agent") pursuant to the Credit and Security Agreement dated July 8, 2016 (as it may have been amended, restated or otherwise modified from time to time, the "Credit Agreement") and secured by the Credit Agreement, Security Agreement, dated July 8, 2016, between Impopharma Inc. an Agent, the Credit Agreement, the Pledge Agreement, dated as of July 8, 2016, and each other Financing Document (collectively, "Security")

Please be advised that we are the solicitors for MidCap, and we refer to the above-noted Credit Agreement and Security.

MidCap has determined that the business operations of the Borrowers are in serious decline and that cash for their operations is not sustainable.

These events constitute a Material Adverse Change as defined in the Credit Agreement and therefore constitute an Event of Default under the terms of the Credit Agreement and the Security.

Accordingly, formal demand is hereby made for all amounts due and owing pursuant to the Credit Agreement and the Security, including the principal monies, together with interest, and all other amounts pursuant thereto.

The total principal amount of indebtedness secured by the security is U.S.\$3,700,000.04 as at July 12, 2018 with interest continuing to accrue at the rate per annum equal to the Applicable Libor Rate (as defined in the Credit Agreement) plus 7.75% and all other fees and charges in accordance with the Credit Agreement and other Financing Document.

This letter is to advise that unless the Borrowers make payment to Midcap in an amount of not less than U.S.\$2,100,000.00, by 5:00 PM prevailing eastern time on Monday, July 16, 2018, our client has instructed that all necessary steps to recover the amounts due and owing will be taken.

Borrowers are hereby notified that Agent and the other secured parties expressly reserve every right, power and remedy specifically provided by the Credit Agreement, the other Financing Documents and



any related documents, now or hereafter existing at law, in equity or by statute and each and every right, power and remedy, whether specifically given by Borrowers or otherwise existing, which may be exercised from time to time and as often and in such order as may be deemed expedient by Agent or the other secured parties and the exercise or beginning of the exercise of any such right, power or remedy shall not be construed as a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. Agent and the other secured parties may exercise each right and remedy available to them from time to time and as often and in such order as they may determine in their sole discretion, and the exercise or beginning of the exercise of any such right or remedy shall not be construed as a waiver of the right to exercise at the same time or thereafter any other right or remedy available to them. No action or inaction Agent or the other secured parties determine, in their sole discretion, to take during the existence of any Event of Default shall operate as a waiver of any Event of Default or any right or remedy under the Financing Documents, and will not be deemed to establish a course of conduct nor justify an expectation by any Borrower that Agent or the other secured parties will make further advances to Borrowers or take any further action or continue to not take any action and will not preclude Agent or the other secured parties from exercising any and all remedies available at any time thereafter. Further, our client expressly reserves the right to exercise its rights under the Blocked Accounts Agreement dated July 8, 2016 or to appoint an interim receiver prior to the expiration of the demand or in the event our client is of the view that such an exercise of rights or appointment is necessary.

Pursuant to the provisions of the Bankruptcy and Insolvency Act, we are enclosing a Notice of Intention to Enforce Security in the prescribed form for each of the Borrowers.

Yours truly,
DLA Piper (Canada) LLP
Per:

A handwritten signature in black ink, appearing to read 'Bruce Darlington', written over a horizontal line.

Bruce Darlington

BYD/

This is Exhibit "C" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.



A Commissioner for Taking Affidavits in and for the Province of Ontario

NOTICE OF INTENTION TO ENFORCE A SECURITY

(Rule 124)

TO: **Impopharma Inc.** ("Borrower"), an insolvent person

Take notice that:

1. MidCap Financial Trust, as administrative agent for the secured creditors ("Agent") under that certain Credit and Security Agreement, dated as of July 8, 2016, among Borrowers, Agent and the other secured creditors party thereto (as it may have been amended, restated or otherwise modified from time to time, the "Credit Agreement") and the other Financing Documents (as defined in the Credit Agreement), intends to enforce its security on behalf of itself and the other secured parties on the insolvent person's property described below:

Substantially all of the present and after-acquired personal property of the Borrowers

2. The security that is to be enforced is in the form of a general security agreement, dated July 8, 2016, the Pledge Agreement, dated as of July 8, 2016, and each other Financing Document.
3. The total principal amount of indebtedness secured by the security is US \$3,700,000.04 as at July 12, 2018 with interest continuing to accrue at the rate per annum equal to the Applicable Libor Rate (as defined in the Credit Agreement) plus 7.75% and all other fees and charges in accordance with the Credit Agreement and other Financing Document.
4. The secured creditor will not have the right to enforce the security until after the expiration of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, Ontario, on July 12, 2018.

MIDCAP FINANCIAL TRUST
by its solicitors DLA Piper (Canada) LLP

By:


Bruce Darlington

CONSENT AND WAIVER

THE UNDERSIGNED hereby:

1. Acknowledges receipt of the Notice herein;
2. Waives the 10 days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and
3. Consents to the immediate enforcement by the Agent of the security referred to herein.

DATED at _____ this _____ day of _____, 2018

IMPOPHARMA INC.

Per:

Name: _____

Title: _____

Authorized Signatory

NOTICE OF INTENTION TO ENFORCE A SECURITY

(Rule 124)

TO: **Impopharma US, Inc.** ("Borrower"), an insolvent person

Take notice that:

1. MidCap Financial Trust, as administrative agent for the secured creditors ("Agent") under that certain Credit and Security Agreement, dated as of July 8, 2016, among Borrowers, Agent and the other secured creditors party thereto (as it may have been amended, restated or otherwise modified from time to time, the "Credit Agreement") and the other Financing Documents (as defined in the Credit Agreement), intends to enforce its security on behalf of itself and the other secured parties on the insolvent person's property described below:

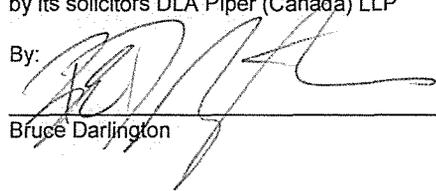
Substantially all of the present and after-acquired personal property of the Borrowers

2. The security that is to be enforced is in the form of a general security agreement, dated July 8, 2016, the Pledge Agreement, dated as of July 8, 2016, and each other Financing Document.
3. The total principal amount of indebtedness secured by the security is U.S. \$3,700,000.04 as at July 12, 2018 with interest continuing to accrue at the rate per annum equal to the Applicable Libor Rate (as defined in the Credit Agreement) plus 7.75% and all other fees and charges in accordance with the Credit Agreement and other Financing Document.
4. The secured creditor will not have the right to enforce the security until after the expiration of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, Ontario, on July 12, 2018.

MIDCAP FINANCIAL TRUST
by its solicitors DLA Piper (Canada) LLP

By:



Bruce Darlington

CONSENT AND WAIVER

THE UNDERSIGNED hereby:

1. Acknowledges receipt of the Notice herein;
2. Waives the 10 days of notice required under section 244 of the *Bankruptcy and Insolvency Act* (Canada); and
3. Consents to the immediate enforcement by the Agent of the security referred to herein.

DATED at _____ this _____ day of _____, 2018

IMPOPHARMA US, INC.

Per:

Name: _____

Title: _____

Authorized Signatory

This is Exhibit "D" referred to in the Affidavit of Theron E. Odlag made before me on this 26 day of July, 2018.

A handwritten signature in black ink, appearing to be 'L. A.', written over a horizontal line.

A Commissioner for Taking Affidavits in
and for the Province of Ontario

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this “**Agreement**”) is made as of this 25th day of July, 2018 by and among **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (“**MidCap**”) as administrative agent for the Lenders listed on the Credit Agreement (as hereinafter defined) and **IMPOPHARMA INC.**, an Ontario corporation (“**Impopharma**”) and **IMPOPHARMA US, INC.** a Delaware corporation (“**Impopharma US**”).

RECITALS:

- A. MidCap has entered into a credit and security agreement dated as of July 8, 2016 with Impopharma and Impopharma US (individually and collectively herein, the “**Borrower**”), a copy of which is attached hereto as **Schedule A** (the “**Credit Agreement**”);
- B. The Borrower is, as at July 12, 2018, indebted to MidCap in the principal amount of at least U.S.\$3,700,000.04, together with other reasonable amounts that are or may become owing for fees, agent costs, professional fees, as well as accruing interest, as set out in the Credit Agreement (collectively, the “**Indebtedness**”);
- C. To secure the obligations of the Borrower to MidCap (including, without limitation, those arising under the Credit Agreement), the Borrower has provided security in favour of MidCap pursuant to certain financing documents, including, without limitation, a general security agreement dated as of July 8, 2016, and pledge agreement dated as of July 8, 2016 (collectively, the “**Security**”);
- D. MidCap has determined that the business operations of the Borrower are in serious decline and that cash for its operations is not sustainable. These events constitute a Material Adverse Change as defined in the Credit Agreement and therefore constitute an Event of Default under the terms of the Credit Agreement and the Security;
- E. On MidCap’s behalf, its counsel, DLA Piper (Canada) LLP issued Notices of Intention to Enforce Security dated July 12, 2018 on the Borrower (the “**Notice**”) and a letter to the Borrower demanding payment of the indebtedness and liabilities of the Borrower to MidCap dated July 12, 2018 (the “**Demand**”);
- F. At the Borrower’s request, MidCap and the Borrower have agreed that the notice period under the Notice has been extended and now expires at 5:00 p.m. on Wednesday July 25th, 2018;
- G. The Borrower has requested, and MidCap has agreed, that MidCap will forbear from taking any further action under the Credit Agreement and the Security, solely on the terms and conditions and subject to the limitations as specified in this Agreement, to permit the Borrower an opportunity to i) seek creditor protection by filing a notice of intention to file a proposal (“**NOI**”) under the Bankruptcy and Insolvency Act (Canada) (the “**BIA**”) with Richter Advisory Group Inc. (“**Richter**”), as NOI trustee; ii) conduct a sale and investment solicitation process in respect of all or substantially all the assets of

the Borrower and iii) immediately implement major cost reduction initiatives to reduce the cash requirements during the said sale process.

NOW THEREFORE in consideration of the respective covenants of the parties hereto as herein contained, and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise, all terms defined in the Credit Agreement and used, but not otherwise defined herein, shall have the respective meanings ascribed to them in the Credit Agreement. All monetary amounts referred to in this Agreement shall refer to U.S. currency. In addition to the terms defined elsewhere in this Agreement, the following capitalized terms used in this Agreement have the meanings set out below:

- (a) “**Financing Agreements**” means, collectively, the Credit Agreement, the Security, the Demand Letter, the Notices, and all documents, instruments or other agreements executed in connection with any of the foregoing;
- (b) “**PPSA**” means the *Personal Property Security Act* (Ontario) and all regulations made thereunder, as amended from time to time, and any other applicable legislation governing security interests in personal property; and
- (c) “**Priority Payables**” means all obligations owing to any creditor which would be entitled to claim priority over, or *pari passu* with, the security interest of MidCap in the assets and undertakings of the Borrower, including wages and remittances required to be made for taxes and other liabilities owed to federal, provincial and municipal governments, including, without limitation, property taxes and money owed in respect of employee source deductions pursuant to the *Canada Pension Plan Act* (Canada), *Employment Insurance Act* (Canada) and *Income Tax Act* (Canada), and in respect of Harmonized Sales Tax.

1.2 Gender and Number

Words importing the singular include the plural and vice versa and words importing gender include all genders. In addition, all references to the Borrower mean, as applicable, the Borrower, or any of them.

1.3 Severability

Each of the provisions contained in this Agreement is distinct and severable, and a declaration of invalidity, illegality or unenforceability of any such provision or part thereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision of this Agreement.

1.4 Headings

The division of this Agreement into articles, sections and clauses, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.5 Entire Agreement

Except for the Financing Agreements and the additional documents provided for herein, this Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied, relating to the subject matter hereof and there are no offers outstanding from Agent or Lenders to the Borrowers nor are there any oral agreements among Agent, Lenders and the Borrowers concerning the Obligations. This Agreement may not be amended or modified except by written consent executed by all the parties. No provision of this Agreement will be deemed waived by any course of conduct unless such waiver is in writing and signed by all the parties, specifically stating that it is intended to modify this Agreement. This Agreement and the other Financing Agreements shall be “Financing Documents” (as defined in the Credit Agreement).

1.6 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable thereto, without regard to any conflicts of law or principles of comity.

1.7 Attornment

Each party hereto irrevocably attorns to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) sitting in the City of Toronto (the “**Court**”) for all matters arising from or in connection with this Agreement.

1.8 Conflicts

If there is any inconsistency or conflict between the terms of this Agreement and the terms of the Financing Agreements, the provisions of this Agreement shall prevail to the extent of the inconsistency, but the foregoing shall not apply to limit or restrict in any way the rights and remedies of MidCap under the Financing Agreements or this Agreement other than as may be specifically contemplated herein.

ARTICLE 2 ACKNOWLEDGEMENT AND CONFIRMATION

2.1 Acknowledgement of Obligations

- (a) The Borrower hereby acknowledges, confirms and agrees that it is indebted to MidCap under the Credit Agreement for the Indebtedness.

- (b) The Borrower hereby acknowledges, confirms and agrees that the Indebtedness, together with interest accrued and accruing thereon, and fees, costs, expenses and other charges now or hereafter properly payable by the Borrower to MidCap pursuant to the Credit Agreement, is unconditionally owing by the Borrower to MidCap, without any right of setoff, defence, counterclaim or reduction of any kind, nature or description whatsoever, and the Borrower is estopped from disputing such Indebtedness.
- (c) The Borrower hereby acknowledges, confirms and agrees that it will continue to accept statements of the Indebtedness issued by MidCap to be accurate statements of the amount and the particulars of the Indebtedness as of the date of the statement, absent manifest error.
- (d) The Borrower hereby acknowledges, confirms and agrees that each of the Financing Documents to which it is a party has been duly executed and delivered and each is in full force and effect as of the date hereof and that the Agent and Lenders are and shall be entitled to all of the rights, remedies and benefits provided for in the Financing Documents and under applicable law.

2.2 Acknowledgement of Security Interests

The Borrower hereby acknowledges, confirms and agrees that (i) the Security has not been discharged, waived or varied, that it is valid and binding upon the Borrower party thereto, and that the Security is enforceable in accordance with its written terms until the obligations of the Borrower to MidCap have been indefeasibly paid and satisfied in full and (ii) Borrower hereby expressly reaffirms, ratifies and confirms its obligations under the Credit Agreement and the other Financing Documents, including its grant to Agent for the benefit of Agent and each Lender, of the security interest in all of the Collateral, including, for the avoidance of doubt, its grant to Agent for the benefit of Agent and each Lender of each Borrower's Intellectual Property.

2.3 Acknowledgement of Certain Defaults

- (a) The Borrower hereby acknowledges, confirms and agrees that one or more defaults have occurred and are continuing pursuant to the provisions of the Credit Agreement (the "**Existing Defaults**").
- (b) The Borrower further acknowledges, confirms and agrees that, as of the date hereof, MidCap has made no promises and has not waived, and does not intend to waive such Existing Default, and nothing contained herein or the transactions contemplated hereby shall be deemed to constitute any such waiver.
- (c) The Borrower hereby acknowledges, confirms and agrees that the Demand and Notice have been properly issued on behalf of MidCap and received by the Borrower.
- (d) The Borrower waives the 10 days of notice required under section 244 of the BIA and consents to the immediate enforcement of the Security by MidCap subject to the terms of this Agreement.

2.4 Additional Acknowledgements

Each of the Borrower hereby acknowledges, confirms and agrees that:

- (a) the facts set out in the recitals to this Agreement are true and accurate, in substance and in fact;
- (b) the Financing Agreements will remain in full force and effect, unamended, except as provided for in this Agreement;
- (c) except as provided for in this Agreement, MidCap (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action, that would constitute a waiver of its rights to enforce the Security and pursue its remedies in respect of the obligations of the Borrower to MidCap, or that would stop it from doing so; and
- (d) to the date hereof, MidCap has acted in a commercially reasonable manner and in good faith and the Borrower are estopped from disputing same.

ARTICLE 3 CONDITIONS PRECEDENT

3.1 Conditions Precedent

This Agreement shall not be effective unless and until MidCap shall have received:

- (a) an executed copy of this Agreement from the Borrower;
- (b) an executed direction from the Borrower, in the form set out in **Schedule B** hereto, addressed to the Toronto Dominion Bank (the "**TD Bank**") directing TD Bank to forthwith wire all funds in the accounts referenced in the account control agreement attached hereto as part of **Schedule B**, in accordance with MidCap's written instructions, which direction shall be held in escrow by MidCap's counsel, DLA Piper (Canada) LLP, and used only in the event of an Intervening Event (as defined in Section 8.1 hereof) or expiration of the Forbearance Period; and
- (c) an executed consent from the Borrower, in the form set out in **Schedule C** hereto, consenting to the immediate private or court-appointment of an interim receiver, receiver or receiver and manager of the Borrower which shall be held in escrow by MidCap's counsel, DLA Piper (Canada) LLP, and used only in the event of an Intervening Event (as defined in Section 8.1 hereof) or expiration of the Forbearance Period with the Existing Default still outstanding.

**ARTICLE 4
AMENDMENTS TO CREDIT AGREEMENT**

4.1 The Credit Agreement is amended as follows:

- (a) The Borrower shall not be required to make any payment to MidCap during the Forbearance Period save as required under this Agreement.

**ARTICLE 5
FORBEARANCE CONDITIONS**

5.1 Forbearance

In reliance upon the acknowledgements, representations, warranties and covenants of the Borrower contained in this Agreement and subject to the terms and conditions of this Agreement and any documents executed in connection herewith, MidCap agrees, subject to the terms hereof, to forbear from exercising its rights and remedies under the Financing Agreements, the PPSA and other applicable law, until the earlier of:

- (a) September 30, 2018; and
- (b) the occurrence of an Intervening Event (as defined in Section 8.1 hereof),
(the “**Forbearance Period**”).

5.2 Borrower’s Covenants

The Borrower hereby covenants and agrees with MidCap as follows:

- (a) The Borrower shall, contemporaneously with the execution of this Agreement, make payment to MidCap for application to the Indebtedness as MidCap sees fit, of an amount not less than U.S.\$1,750,000.00;
- (b) To the extent that Indebtedness has not yet been repaid in full, the Borrower shall wire to MidCap, any and all proceeds received by the Borrower or any of its affiliates in respect of any Scientific Research and Experimental Development tax incentive claim (the “**SRED Claim**”), with one (1) business day of receipt;
- (c) The Borrower will, forthwith upon the execution of this Agreement and in any event on or before July 25th, 2018 seek creditor protection by filing an NOI under the BIA with Richter as NOI trustee;
- (d) The Borrower will, within three (3) business days of filing its NOI, file a motion with the Court seeking approval of the sale and investment solicitation process outlined below (the “**SISP**”); such motion to include requests for the granting of a super-priority administration charge, a super-priority D&O charge and a super-priority KERP charge all in accordance with the current draft model orders (collectively, the “**Super-Priority Charges**”), which Super-Priority Charges shall

rank prior to the Security (subject only to Section 5.2(e) below), but only up to the following amounts, with any amount owing by the Borrower to the beneficiaries of the Super-Priority Charges that in excess of those amounts set forth below being subordinated to the Security:

- (a) Administration charge: CDN\$100,000;
- (b) D&O Charge: CDN\$75,000
- (c) KERP Charge: CDN\$360,000

If any of the Super-Priority Charges are not authorized by the Court, for any reason, then MidCap agrees that any liability of the Borrower that would otherwise be covered thereunder, subject to and up to the maximum amount set out above, will be paid by the Borrower in priority to any other claim owing to MidCap, as and when such liability is payable, subject only to Section 5.2(e) below;

- (e) The Super-Priority Charges will rank subordinate to the Security as it attaches to the SRED Claim and the payment of amounts secured by the Super-Priority Charges shall be subordinated to MidCap's right to receive payment of any and all proceeds in respect of any SRED Claim received by the Borrower (or its affiliates) and with respect to MidCap only, the amount of KERP Charge shall be reduced by any payment made to the beneficiary of such Charge in accordance with the Projected Statement of Cash Flow attached hereto as **Schedule D**;
- (f) The Borrower will prepare, with the assistance of Richter, forthwith upon the execution of this Agreement, solicitation materials to solicit interest in the potential purchase and sale of the Borrower's assets; said materials to be substantially completed on or before August 7th, 2018 and said materials to include a deadline of August 30th, 2018 for all interested parties to submit binding letters of intent to purchase;
- (g) The Borrower will, with the assistance of Richter, forthwith upon the execution of this Agreement, establish a data room and begin populating said data room with information, documentation and data with respect to substantially all of the Borrower's assets so as to provide any interested party with full and complete information as to the nature and quality of the Borrower's assets; said data room to be substantially complete on or before August 7th, 2018;
- (h) The Borrower will, with the assistance of Richter, within a reasonable time after the execution of this Agreement up to and including August 30th, 2018, diligently distribute the said solicitation materials and provide access to the said data room to any interested party subject to the execution of an appropriate non-disclosure agreement and co-operate fully with Richter in responding to any reasonable inquiry by any interested party with respect to the business or assets of the Borrower;

- (i) The Borrower will, with the assistance of Richter, on August 30th, 2018, consider all letters of intent received and begin to negotiate a binding definitive agreement of purchase and sale with one or more interested parties;
- (j) The Borrower will enter into a binding definitive agreement of purchase and sale to be conditional solely only to obtaining court and any required regulatory approval on or before September 15, 2018; and
- (k) The Borrower will complete the sale of substantially all its assets on or before September 30, 2018.

5.3 Expiration or Termination of the Forbearance Period

Upon the expiration of the Forbearance Period, including upon the occurrence of an Intervening Event, MidCap shall be entitled, at its discretion, to exercise any or all of its rights and remedies under the Financing Agreements and any other agreement executed in connection herewith, or otherwise available at law, immediately and at its discretion. The Borrower acknowledges and agrees that such rights and remedies include, without limitation, demanding immediate repayment from the Borrower of the Indebtedness (including payment of the Forbearance Fee, as set out in Section 5.4), and exercising its rights under the consents from the Borrower to appoint a receiver or receiver and manager pursuant to the PPSA and/or court appointment.

5.4 Forbearance Fee

In consideration of MidCap entering into this Agreement, immediately upon the execution of this Agreement, the Borrower will pay to MidCap, in addition to any other amounts to be paid, a forbearance fee of US\$54,999.00 (the “**Forbearance Fee**”) in lieu of any interest payments to be made on account of the Indebtedness during the Forbearance Period. Such Forbearance Fee will be fully earned upon execution of this Agreement by the Borrower and is owing and to be paid in addition to all other fees, interest, costs and expenses payable in connection with the Financing Agreements or this Agreement. The Forbearance Fee shall form part of the Indebtedness and shall be secured by the Security.

5.5 No Other Waivers; Reservation of Rights

Subject to of the terms and conditions set forth this Agreement, MidCap reserves the right, in its sole discretion, to exercise any or all of its rights or remedies under any one or more of the Financing Agreements, the PPSA, or other applicable law, and MidCap has not waived any such rights or remedies, and nothing in this Agreement nor any delay on the part of MidCap in exercising any such rights or remedies, shall be construed as a waiver of any such rights or remedies.

ARTICLE 6 REPORTING

6.1 Reporting Requirements

During the Forbearance Period, the Borrower shall provide MidCap with the following additional reporting or information, independently of any other reporting obligations:

- (a) a weekly status report as to the progress made in respect of the SISP from the Borrower and Richter;
- (b) a weekly current actual and projected cash flow report within 10 days of each month end; and
- (c) any other reporting requested from time to time by MidCap.

ARTICLE 7 OBLIGATIONS OF THE CREDIT PARTIES DURING THE FORBEARANCE PERIOD

7.1 Credit Agreement

During the Forbearance Period, the Borrower shall strictly adhere to all the terms, conditions and covenants of the Credit Agreement, this Agreement and the other Financing Agreements, including, without limitation, terms requiring prompt payment of principal, interest, fees and other amounts when due, except to the extent that such terms, conditions and covenants are otherwise specifically amended by this Agreement.

7.2 Full Co-Operation

During the Forbearance Period, the Borrower shall cooperate fully with MidCap and its respective agents, consultants and employees, by providing promptly all information requested by any such party, and by providing MidCap with full access to the books, records, property, assets and personnel of the Borrower wherever they may be situated, at the request of and at times convenient to any such party, acting reasonably, which right of access shall include the right to inspect and appraise such property and assets, at MidCap's discretion. The Borrower will instruct Richter to cooperate fully with MidCap and its respective agents, consultants and employees, by providing promptly all information requested by any such party.

7.3 Availability of Funds

The Borrower hereby acknowledges, agrees and confirms that there will be sufficient cleared funds in its accounts to cover all cheques written during the Forbearance Period.

7.4 Payment of Professional Expenses

The Borrower hereby covenant and agree, immediately upon the execution of this Agreement, to reimburse MidCap for all reasonable Professional Expenses (as defined below) incurred to date (the "**Current Expenses**"), up to the amount of US\$20,000, with the balance of such Current

Expenses, if any, to be added to the Indebtedness secured by the Security. The Credit Parties covenant and agree to accept statements of the Current Expenses issued by MidCap to be accurate statements of the amount and the particulars of the Professional Expenses as of the date of any such statement, absent manifest error. Each of the Borrower hereby covenants and agrees with MidCap to reimburse MidCap for all expenses when due, including, without limitation, legal and other professional expenses that MidCap has incurred or will incur arising out of its dealings with the Borrower and in the protection, preservation and enforcement of the Security (collectively, the “**Professional Expenses**”), including, without limitation, the fees and expenses of MidCap’s solicitors, DLA Piper (Canada) LLP and Hogan Lovells US, LLP, and that such Professional Expenses shall be for the account of the Borrower, on a joint and several basis. Nothing in this Agreement, shall derogate from the obligation of the Borrower to pay for all the Professional Expenses or shall constitute a cap on Professional Expenses. Notwithstanding the foregoing, MidCap shall add all the Professional Expenses to the Indebtedness if the same are not paid when due. The Borrower acknowledges and agrees that the Professional Expenses which are added to the Indebtedness shall be secured by the Security.

7.5 Operational and Other Obligations

- (a) In addition to (and not in lieu of its obligations under the Credit Agreement and the other Financing Documents), for the duration of the Forbearance Period, unless MidCap provides its prior written consent to the contrary, the Borrower hereby covenants and agrees with MidCap as follows:
 - (i) the Borrower shall maintain its corporate existence as a valid and subsisting entity and shall not merge, amalgamate or consolidate with any other corporation(s);
 - (ii) except as specifically provided for herein, the Borrower shall comply in all respects with all terms and provisions of the Financing Agreements and this Agreement and nothing herein derogates therefrom;
 - (iii) the Borrower shall comply with any and all cash management obligations and obligations to maintain insurance in accordance with the Financing Agreements;
 - (iv) the Borrower shall not make any distribution or payment to any person save and except in substantial accordance with the Projected Statement of Cash Flow attached hereto as **Schedule D** and otherwise as required in this Agreement;
 - (v) the Borrower shall not make any distribution or payment to any person who does not deal with the Borrower at arm’s length (as such term is defined in the *Income Tax Act* (Canada)), except for:
 - (A) payments of salary at levels not in excess of those now in effect;

- (B) payments to any landlord which are commercially reasonable and in accordance with the current lease agreement for the premises leased from such landlord; and
 - (C) payments to the Borrower's ordinary suppliers in respect of any ongoing supply arrangement with the Borrower arising in the ordinary course of the Borrower's business, which are commercially reasonable and are competitive with payments that would be required to be paid to a comparable supplier acting at arm's length;
- (vi) the Borrower shall not make any loans or advance money or property to any other party (including, without limitation, any subsidiary or affiliate of the Borrower) or invest in (by capital contribution, dividend or otherwise) or purchase or repurchase the shares or indebtedness or all or a substantial part of the assets or property of any other party (including, without limitation, any subsidiary or affiliate of the Borrower), or guarantee, assume, endorse, or otherwise become responsible (directly or indirectly) for the indebtedness, performance, obligations or dividends of any other party (including, without limitation, any subsidiary or affiliate of the Borrower) or agree to do any of the foregoing, other than as required by or permitted under the Financing Agreements;
 - (vii) the Borrower shall not repay any principal or interest which may be owing or become owing in connection with any shareholder or related party loan or any loan made by any party, the obligations of which are subordinate to MidCap;
 - (viii) the Borrower shall not make any distribution (whether by dividend or otherwise) or effect any return of capital on any investment made by any shareholder, or any party related to any shareholder, of the Borrower;
 - (ix) the Borrower shall maintain and keep current any and all Priority Payables and shall provide on a regular basis evidence of such payments satisfactory to MidCap;
 - (x) the Borrower shall not, in any case, make any payment to any party if the financial position of the Borrower after making such payment would put such Borrower in a position of breach or default of its obligations under this Agreement or constitute an Intervening Event;
 - (xi) the Borrower shall give to MidCap prompt notice of any material litigation, arbitration or administrative proceeding before or of any court, arbitration, tribunal or governmental authority affecting any of the assets, property or undertakings of the Borrower; and

- (xii) unless otherwise agreed to herein, the Borrower shall not do any act or thing which may have the effect of defeating or delaying the enforcement of MidCap's rights and remedies under the Security.
- (b) The Borrower represents and warrants to MidCap that the Borrower's obligations with respect to employee wages and vacation pay are current as of the date of this Agreement and shall remain current throughout the Forbearance Period.

ARTICLE 8 INTERVENING EVENTS

8.1 Intervening Events

This Agreement shall terminate, at MidCap's discretion,

- i. upon the happening of any one of the following events of default and the expiry of a 48 hour cure period following the issuance of a notice of default by MidCap to the Borrower:
 - (a) any material representation, warranty or statement made by the Borrower in this Agreement was untrue or incorrect when made or becomes untrue or incorrect;
 - (b) the Borrower fails to perform or comply with any of its covenants or obligations contained in this Agreement, the Credit Agreement or any other Financing Document;
 - (a) save as provided for in this Agreement, the Security ceases to constitute a first-ranking, valid and perfected security interest against the assets of the Borrower;
 - (b) the loss, damage, destruction, deterioration or confiscation of any material portion of the Borrower's property or assets;
 - (c) any person takes possession of any property of any of the Borrower by way of or in contemplation of enforcement of security, or a distress or execution or similar process is levied or enforced against any property of the Borrower;
 - (d) any change of ownership, control or management of the Borrower without MidCap's prior written consent;
 - (e) the Borrower fails to maintain current insurance or other material contracts; and
 - (f) the Borrower fails to meet payroll obligations or does not have sufficient funds available to fund payroll obligations, or fails to produce evidence, satisfactory to MidCap, acting reasonably, of the availability of such funds to MidCap within one (1) business day prior to the date that any payroll falls due.

Any such default shall be an "**Intervening Event**". For greater certainty, upon the occurrence of an Intervening Event, MidCap shall, at its discretion, be entitled to exercise or enforce any of its

rights and remedies under the Financing Agreements, this Agreement and any other agreement executed in connection therewith or herewith, or otherwise available at law, immediately and at its sole discretion.

ARTICLE 9 GENERAL PROVISIONS

9.1 Effect of this Agreement

Except as modified pursuant hereto, no other changes or modifications to the terms of the Financing Agreements are intended or implied and in all other respects, the terms of the Financing Agreements are confirmed.

9.2 Further Assurances

The parties hereto shall execute and deliver such supplemental documents and take such supplemental action as may be necessary or desirable to give effect to the provisions and purposes of this Agreement, all at the sole expense of the Borrower.

9.3 Binding Effect

This Agreement shall be binding upon and enure to the benefit of each of the parties hereto and its respective successors, heirs, executors, administrators, permitted assigns and legal representatives.

9.4 Survival of Representations and Warranties

All representations and warranties made in this Agreement or any other document furnished in connection herewith shall survive the execution and delivery of this Agreement and such other document delivered in connection herewith, and no investigation by MidCap or any closing shall affect the representations and warranties or the rights of MidCap to rely upon such representations and warranties.

9.5 Confidentiality

MidCap and its respective professional advisors shall be permitted to disclose to any required party or parties, such information obtained from the Borrower as may be required, and only to the extent that such information is in fact required, in order for MidCap to recover amounts owed to MidCap by the Borrower.

9.6 Release

In consideration of the agreements of MidCap contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower, on its behalf and on behalf of its successors, assigns and legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges MidCap and each of its successors and assigns, participants, affiliates, subsidiaries, branches, divisions, predecessors, directors, officers, attorneys, employees, lenders and other representatives and advisors (MidCap

and all such other persons being hereinafter referred to collectively as the “**Releasees**” and individually as a “**Releasee**”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defences, rights of set-off, demands and liabilities whatsoever (individually, a “**Claim**” and collectively, “**Claims**”) of every name and nature, known or unknown, suspected or unsuspected, both arising at law and in equity, which the Borrower or any of their successors, assigns and legal representatives may now own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Agreement, including, without limitation, for or on account of, or in relation to, or in any way in connection with, any of the Financing Agreements or transactions thereunder or related thereto.

9.7 No Novation

This Agreement will not discharge or constitute novation of any debt, obligation, covenant or agreement contained in the Credit Agreement or any of the Financing Agreements but the same shall remain in full force and effect save to the extent amended by this Agreement.

9.8 Notice

Without prejudice to any other method of giving notice, any notice required or permitted to be given to a party pursuant to this Agreement will be conclusively deemed to have been received by such party on the day of the sending of the notice by prepaid private courier to such party at its address noted below or by email at its email address noted below. Any party may change its address for service or address by notice given in the foregoing manner.

- (a) Notice to all Borrower shall be sent to:

Impopharma Inc.
255 Spinnaker Way, Unit 6
Concord, Ontario L4K 4J1 Canada
Attention: Ted Odlaug
Fax: (905) 760-0235
E-Mail: TedO@impopharma.com

with a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2 Canada
Attn: Guy Martel
Fax: (514) 397-3605
Email: gmartel@stikeman.com

- (b) Notice to MidCap shall be sent to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Account Manager for Impopharma transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Legal
Facsimile: (301) 941-1450
Email: legalnotices@midcapfinancial.com

And with a copy to:

DLA Piper (Canada) LLP
Barristers and Solicitors
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King Street West
Toronto, Ontario
M5X 1E2

Attention: Bruce Darlington

Facsimile: (416) 369-5210
Email: bruce.darlington@dlapiper.com

Hogan Lovells US LLP
875 Third Avenue
New York, NY 10022

Attention: Deborah Staudinger

Facsimile: (212) 918-3100
Email: deborah.staudinger@hoganlovells.com

9.9 Binding and Enforceable Agreement

In order for this Agreement to be binding and enforceable, it shall be duly executed by the Borrower and delivered to MidCap by no later than 5:00 p.m. (Toronto time) on July []th, 2018.

9.10 Execution in Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which taken together will be deemed to constitute one and the same instrument. Counterparts may be executed either in original, faxed or portable document format (“PDF”) form and the parties adopt any signatures received by a receiving fax machine or by emailed PDF as original signatures of the parties, provided, however, that any party providing its signature in such manner will promptly forward to the other party an original of the signed copy of the Agreement which was so faxed or emailed.

9.11 No Set Off, etc.

The Borrower reaffirm that the Financing Agreements remain in full force and effect as amended hereby and acknowledge and agree that there is no defence, set off or counterclaim of any kind, nature or description to its obligations arising under the Financing Agreements as a result of the execution of this Agreement or otherwise.

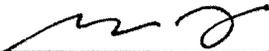
[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, under seal, as of the date first written above.

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:  (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory
I have authority to bind the trust.

ELM 2016-1 TRUST

By: MidCap Financial Services Capital
Management, LLC
its servicer

By: _____ (SEAL)
Name: John O'Dea
Title: Authorized Signator

IMPOPHARMA INC.

By: _____ (SEAL)
Name:
Title:
I have authority to bind the corporation.

IMPOPHARMA US, INC.

By: _____ (SEAL)
Name:
Title:
I have authority to bind the corporation.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, under seal, as of the date first written above.

MIDCAP FINANCIAL TRUST

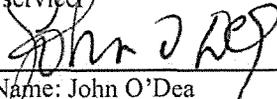
By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: _____ (SEAL)
Name: Maurice Amsellem
Title: Authorized Signatory
I have authority to bind the trust.

ELM 2016-1 TRUST

By: MidCap Financial Services Capital
Management, LLC
its servicer

By:  _____ (SEAL)
Name: John O'Dea
Title: Authorized Signator

IMPOPHARMA INC.

By: _____ (SEAL)
Name:
Title:
I have authority to bind the corporation.

IMPOPHARMA US, INC.

By: _____ (SEAL)
Name:
Title:
I have authority to bind the corporation.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement, under seal, as of the date first written above.

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

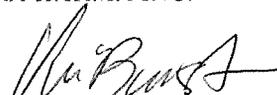
By: _____ (SEAL)

Name: Maurice Amsellem

Title: Authorized Signatory

I have authority to bind the trust.

IMPOPHARMA INC.

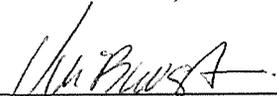
By:  _____ (SEAL)

Name: Ken Brewster

Title: CFO

I have authority to bind the corporation.

IMPOPHARMA US, INC.

By:  _____ (SEAL)

Name: Ken Brewster

Title: officer

I have authority to bind the corporation.

**SCHEDULE A
CREDIT AGREEMENT**

CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT (this “**Agreement**”), dated as of July 8, 2016 (the “**Closing Date**”) by and among **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (“**MidCap**”) as administrative agent, the Lenders listed on the Credit Facility Schedule attached hereto and otherwise party hereto from time to time (each a “**Lender**”, and collectively the “**Lenders**”), and **IMPOPHARMA INC.**, a corporation validly existing under the *Business Corporations Act* (Ontario) (“**Impopharma**”), **IMPOPHARMA US, INC.** a Delaware corporation and the other entities shown as signatories hereto as a Borrower, provides the terms on which Lenders agree to lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 15. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All headings numbered without a decimal point are herein referred to as “Articles,” and all paragraphs numbered with a decimal point (and all subparagraphs or subsections thereof) are herein referred to as “Sections.”

2. CREDIT FACILITIES AND TERMS

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay to each Lender in accordance with each Lender’s respective Pro Rata Share of each Credit Facility, the outstanding principal amount of all Credit Extensions made by the Lenders under such Credit Facility and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Credit Facilities. Subject to the terms and conditions hereof, each Lender, severally, but not jointly, agrees to make available to Borrower Credit Extensions in respect of each Credit Facility set forth opposite such Lender’s name on the Credit Facility Schedule, in each case not to exceed such Lender’s commitment as identified on the Credit Facility Schedule (such commitment of each Lender, as it may be amended to reflect assignments made in accordance with this Agreement or terminated or reduced in accordance with this Agreement, its “**Applicable Commitment**”, and the aggregate of all such commitments of all Lenders, the “**Applicable Commitments**”).

2.3 Credit Facilities.

(a) Nature of Credit Facility; Credit Extension Requests. Credit Extensions in respect of a Credit Facility may be requested by Borrower during the Draw Period for such Credit Facility. For any Credit Extension requested under a Credit Facility (other than a Credit Extension on the Closing Date), Agent must receive the completed Credit Extension Form by 12:00 noon (New York time) fifteen (15) Business Days prior to the date the Credit Extension is to be funded. To the extent any Credit Facility proceeds are repaid for any reason, whether voluntarily or involuntarily (including repayments from insurance or condemnation proceeds), Agent and the Lenders shall have no obligation to re-advance such sums to Borrower.

(b) Principal Payments. Principal payable on account of a Credit Facility shall be payable by Borrower to Agent, for the account of the applicable Lenders in accordance with their respective Pro Rata Shares, immediately upon the earliest of (i) the date(s) set forth in the Amortization Schedule for such Credit Facility (or if no such Amortization Schedule is attached, then upon Agent’s demand for payment), or (ii) the Maturity Date. Except as this Agreement may specifically provide otherwise, all prepayments of Credit Extensions under the Credit Facilities shall be applied by Agent to the applicable Credit Facility in inverse order of maturity. The monthly payments required under the Amortization Schedule shall continue in the same amount (for so long as the applicable Credit Facility shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the applicable Credit Facility.

(c) Mandatory Prepayment. If a Credit Facility is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Agent, for payment to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Credit Facility and all other Obligations, plus accrued and unpaid interest thereon, (ii) any fees payable under the Fee Letters by reason of such prepayment, (iii) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (iv) all other sums that shall have become due and payable, including Protective Advances. Additionally, at the election of Agent, Borrower shall prepay the Credit Facilities (to be allocated pro rata among the outstanding Credit Extensions under all Credit Facilities) in the following amounts: (A) on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) for personal property, or in excess of Fifty Thousand Dollars (\$50,000) for real property, in respect of assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and, in the case of personal property, repayment of any permitted purchase money debt encumbering the personal property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations; and (B) upon receipt by any Credit Party of the proceeds of any asset disposition of personal property not made in the Ordinary Course of Business (other than transfers permitted by Section 7.1) an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of any permitted purchase money debt encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations. Notwithstanding the foregoing and without limiting the provisions of Section 7.1, (a) so long as no Default or Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy or asset disposition, in each case up to Five Hundred Thousand Dollars (\$500,000) in the aggregate, with respect to any property loss or disposition, as applicable, in any one year, toward the replacement or repair of destroyed, damaged or disposed property; provided that any such replaced or repaired property (x) shall be of greater, equal, or like value as the replaced or repaired Collateral and (y) shall be deemed Collateral in which Agent and the Lenders have been granted a first priority security interest, and (b) after the occurrence and during the continuance of a Default or Event of Default, all proceeds payable under such casualty policy or disposition, as applicable, shall, at the option of Agent, be payable to Agent, for the ratable benefit of the Lenders, on account of the Obligations.

(d) Permitted Prepayment. Except as provided below, Borrower shall have no right to prepay the Credit Extensions made in respect of a Credit Facility. After the Closed Period, if any, for the applicable Credit Facility as specified in the Credit Facility Schedule therefor, Borrower shall have the option to prepay the Prepayable Amount (as defined below) of such Credit Facility advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Agent and each Lender of its election to prepay the Prepayable Amount at least thirty (30) days prior to such prepayment, and (ii) pays to Agent, for payment to each applicable Lender in accordance with its respective Pro Rata Share, on the date of such prepayment, an amount equal to the sum of (A) the Prepayable Amount, plus accrued interest thereon, (B) any fees payable under the Fee Letters by reason of such prepayment, (C) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (D) all Protective Advances. The term "Prepayable Amount" means all, but not less than all, of the Credit Extensions and all other Obligations under all Credit Facilities.

2.4 Reserved.

2.5 Reserved.

2.6 Interest and Payments; Administration.

(a) Interest; Computation of Interest. Each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made until paid in full at a rate per annum equal to the Applicable Interest Rate. Each Lender may, upon the failure of Borrower to pay any fees or interest as required herein, capitalize such interest and fees and begin to accrue interest thereon until paid in full, which such interest shall be at a rate per annum equal to the Applicable Interest Rate unless and until the Default Rate shall otherwise apply. All other Obligations shall bear interest on the outstanding amount thereof from the date they first become payable by Borrower under the Financing Documents until paid in full at a rate per annum equal to the Applicable Interest Rate unless and until the Default Rate shall otherwise apply. Interest on the Credit Extensions and all fees

payable under the Financing Documents shall be computed on the basis of a 360-day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on any Credit Extension or other advance, the date of the making of such Credit Extension or advance shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension or advance is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension or advance. As of each Applicable Interest Rate Determination Date, Agent shall determine (which determination shall, absent manifest error in calculation, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Credit Extensions.

(b) Default Rate. Upon the election of Agent following the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five hundred basis points (5.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this subsection is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or the Lenders.

(c) Payments Generally. Except as otherwise provided in this Agreement, including pursuant to Section 2.6(c), or as otherwise directed by Agent, all payments in respect of the Obligations shall be made to Agent for the account of the applicable Lenders in accordance with their Pro Rata Share. Payments of principal and interest in respect of each Credit Facility shall be made to each applicable Lender identified on the applicable Credit Facility Schedule. All Obligations are payable upon demand of Agent in the absence of any other due date specified herein. All fees payable under the Financing Documents shall be deemed non-refundable as of the date paid. Any payment required to be made to Agent or a Lender under this Agreement may be made by debit or automated clearing house payment initiated by Agent or such Lender from any of Borrower’s deposit accounts, including the Designated Funding Account, and Borrower hereby authorizes Agent and each Lender to debit any such accounts for any amounts Borrower owes hereunder when due. Without limiting the foregoing, Borrower shall tender to Agent and the Lenders any authorization forms as Agent or any Lender may require to implement such debit or automated clearing house payment. These debits or automated clearing house payments shall not constitute a set-off. Payments of principal and/or interest received after 12:00 noon New York time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower under any Financing Document shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. The balance of the Obligations, as recorded in Agent’s books and records at any time, shall be conclusive and binding evidence of the amounts due and owing to Agent and the Lenders by each Borrower absent manifest error; provided, however, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower’s duty to pay all amounts owing hereunder or under any Financing Document. Agent shall provide Borrower with a monthly statement regarding the Credit Extensions (but neither Agent nor any Lender shall have any liability in respect of any failure by Agent to provide any such statement). Unless Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrower in all respects as to all matters reflected therein.

(d) Interest Payments; Maturity Date. Commencing on the first (1st) Payment Date following the funding of a Credit Extension, and continuing on the Payment Date of each successive month thereafter through and including the Maturity Date, Borrower shall make monthly payments of interest, in arrears, calculated as set forth in this Section 2.6. All unpaid principal and accrued interest is due and payable in full on the Maturity Date or any earlier date specified herein. If the Obligations are not paid in full on or before the Maturity Date, all interest thereafter accruing shall be payable immediately upon accrual.

(e) Fees. Borrower shall pay, as and when due and payable under the terms of the Fee Letters, to Agent and each Lender, as applicable, for their own accounts and not for the benefit of any other Lenders, the fees set forth in the Fee Letters.

(f) Protective Advances. Borrower shall pay to Agent for the account of the Lenders all Protective Advances (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement, the other Financing Documents and the Warrants) when due under any Financing Document (and in the absence of any other due date specified herein, such Protective Advances shall be due upon demand).

(g) Maximum Lawful Rate. In no event shall the interest charged hereunder with respect to the Obligations exceed the maximum amount permitted under the Laws of the State of Maryland. Notwithstanding anything to the contrary in any Financing Document, if at any time the rate of interest payable hereunder (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable Law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received, had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of such Lender's Credit Extensions or to other amounts (other than interest) payable hereunder, and if no such Credit Extensions or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrower. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

(h) Taxes; Additional Costs.

(i) Any and all payments by or on account of any obligation of Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable law. For purposes of this Section 2.6(h), the term "applicable law" shall include FATCA. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then Withholding Agent shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.6(h)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(ii) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(iii) Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.6(h)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(iv) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.1(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with this Agreement or any Obligation, and any reasonable expenses

arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender pursuant to this Agreement or otherwise payable by the Agent to the Lender from any other source against any amount due to Agent under this paragraph (iv).

(v) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.6(h), Borrower shall deliver to Agent the original or a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made in connection with this Agreement or any Obligation shall deliver to Borrower and the Agent, at the time or times reasonably requested by Borrower or the Agent, such properly completed and executed documentation reasonably requested by Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or the Agent as will enable Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.6(h)(vii)(A), (vii)(B) and (vii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(vii) Without limiting the generality of the foregoing,

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

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

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) executed copies of IRS Form W-8BEN-E or W-8BEN, as applicable and (y) a certification to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with such Other Tax Certification as Agent may reasonably request from time to time; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E or W-8BEN, as

applicable, IRS Form W-9, and/or such Other Tax Certification from each beneficial owner as Agent may reasonably request, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide such Other Tax Certification as may be reasonably required by Agent on behalf of each such direct and indirect partner;

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

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

Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 2.6(h)(vi) or (vii) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Agent in writing of its legal inability to do so.

(viii) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.6(h) (including by the payment of additional amounts pursuant to this Section 2.6(h)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.6(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.6(h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.6(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(ix) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a

consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction; provided, however, that notwithstanding anything in this Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(x) If any Lender requires compensation under this Section 2.6(h), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to this Section 2.6(h), then, upon the written request of Borrower, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Credit Extensions hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (A) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (B) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(xi) Each party's obligations under this Section 2.6(h) shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(i) Administrative Fees and Charges.

(i) Borrower shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of the books and records of the Credit Parties, audits, valuations or appraisals of the Collateral, audits of Borrower's compliance with applicable Laws and such other matters as Agent shall deem reasonably appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to any Borrower; provided, that, as long as no Event of Default has occurred within the preceding twelve (12) months, Agent shall be entitled to such reimbursement for no more than one audit and inspection per calendar year.

(ii) If payments of principal or interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents, are not timely made and remain overdue for a period of five (5) days, Borrower, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(j) Canadian Limitations.

(i) For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(ii) Notwithstanding the foregoing, if (i) a Security Document creates a mortgage on real property or a hypothec on immovables of a Credit Party or (ii) the rate provided for in Section 2.6(b) is otherwise determined to be unenforceable against a Credit Party, then, in either case, the Credit Party shall pay interest at a rate per annum equal to the rate otherwise applicable to such Credit Extensions or, in the case of any amount not constituting principal or interest on a Credit Extension, at a rate equal to the Applicable Interest Rate, provided that, without limiting the effect of this Section 2.6(j)(ii), nothing in Section 2.6(j)(ii) shall preclude the operation of Section 2.6(b) in respect of a Credit Party where (A) a Security Document that creates a mortgage on real property or a hypothec on immovables of a Credit Party also creates a Lien on other property and assets of such Credit Party; or (B) the principal of or interest on any Credit Extension or any fee or other amount payable by such Credit Party hereunder is also secured by a Lien other than a mortgage on real property or a hypothec on immovables.

(iii) If any provision of this Agreement would oblige a Canadian Credit Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

(A) first, by reducing the amount or rate of interest; and

(B) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

2.7 Secured Promissory Notes. At the election of any Lender made as to each Credit Facility for which it has made Credit Extensions, each Credit Facility shall be evidenced by one or more secured promissory notes in form and substance satisfactory to Agent and the Lenders (each a "**Secured Promissory Note**"). Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

3. **CONDITIONS OF CREDIT EXTENSIONS**

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make the initial advance in respect of a Credit Facility is subject to receipt by Agent, in form and substance satisfactory to Agent, of such documents, and completion of such other matters, as Agent may reasonably deem necessary or appropriate, including, without limitation, all items listed on the Closing Deliveries Schedule attached hereto.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) satisfaction of all Applicable Funding Conditions for the applicable Credit Extension as set forth in the Credit Facility Schedule, if any, in each case each in form and substance satisfactory to Agent and each Lender;

(b) timely receipt by the Agent and each Lender of an executed Credit Extension Form in the form attached hereto;

(c) (i) for Credit Extensions made on the Closing Date, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all respects on the Closing Date; provided, however, that those representations and warranties expressly referring to a specific date shall be true, correct and complete in all respects as of such date; and

(ii) for Credit Extensions made after the Closing Date, if any, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all material respects on the date of the Credit Extension Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Article 5 and elsewhere in the Financing Documents remain true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(d) no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension;

(e) Agent shall be satisfied with the results of any searches conducted under Section 3.5;

(f) receipt by Agent of such evidence as Agent shall request to confirm that the deliveries made in Section 3.1 remain current, accurate and in full force and effect, or if not, updates thereto, each in form and substance satisfactory to Agent; and

(g) as determined in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Agent.

3.3 Method of Borrowing. Each Credit Extension in respect of each Credit Facility shall be in an amount at least equal to the applicable Minimum Credit Extension Amount for such Credit Facility as set forth in the Credit Facility Schedule or such lesser amount as shall remain undisbursed under the Applicable Commitments for such Credit Facility. The date of funding for any requested Credit Extension shall be a Business Day. To obtain a Credit Extension, Borrower shall deliver to Agent a completed Credit Extension Form executed by a Responsible Officer (other than a Credit Extension on the Closing Date). Agent may rely on any notice given by a person whom Agent reasonably believes is a Responsible Officer or designee thereof. Agent and the Lenders shall have no duty to verify the authenticity of any such notice.

3.4 Funding of Credit Facilities. In Agent's discretion, Credit Extensions may be funded by Agent on behalf of the Lenders or by the Lenders directly. If Agent elects to fund any Credit Extension on behalf of the Lenders, upon the terms and subject to the conditions set forth in this Agreement, each Lender, severally and not jointly, shall make available to Agent its Pro Rata Share of the requested Credit Extension, in lawful money of the United States of America in immediately available funds, prior to 11:00 a.m. (New York time) on the specified date for the Credit Extension. Agent (or if Agent elects to have each Lender fund its Credit Extensions to Borrower directly, each Lender) shall, unless it shall have determined that one of the conditions set forth in Section 3.1 or 3.2, as applicable, has not been satisfied, by 2:00 p.m. (New York time) on the specified date for the Credit Extension, credit the amounts received by it in like funds to Borrower by wire transfer to the Designated Funding Account (or to the account of Borrower in respect of the Obligations, if the Credit Extension is being made to pay an Obligation of Borrower). A Credit Extension made prior to the satisfaction of any conditions set forth in Section 3.1 or 3.2 shall not constitute a waiver by Agent or Lenders of Borrower's obligation to satisfy such conditions, and any such Credit Extension made in the absence of such satisfaction shall be made in each Lender's discretion.

3.5 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrower's expense, the searches described in clauses (a), (b), and (c) below against Borrower and any other Credit Party, the results of which are to be consistent with Borrower's representations and warranties under this Agreement and the reasonably satisfactory results of which shall be a condition precedent to all Credit Extensions requested by Borrower: (a) title investigations, UCC or personal property searches, writ searches and fixture filings searches; (b) judgment, pending litigation, federal tax

lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent.

4.2 Representations and Covenants.

(a) As of the Closing Date, Borrower has no ownership interest in any Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than as disclosed on the **Disclosure Schedule** attached hereto).

(b) Borrower shall promptly (and in any event within 10 days of acquiring any of the following) deliver to Agent all tangible Chattel Paper and all Instruments and documents owned at any time by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrower shall provide Agent with "control" (as in the Code) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the Code. Borrower also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrower will mark conspicuously all such Chattel Paper and all such Instruments and Documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such Instruments and Documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents.

(c) Borrower shall promptly (and in any event within 10 days of acquiring any of the following) deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent, except if such letter of credit rights are "supporting obligations" as defined in the Code. Borrower shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in the Code) of any such letter of credit rights (other than those constituting supporting obligations) in a manner acceptable to Agent.

(d) Borrower shall promptly (and in any event within 10 days) advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect to such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrower shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(e) Except for (i) Inventory in an aggregate amount of no more than One Hundred Thousand Dollars (\$100,000) and (ii) Inventory at the Spinnaker Way Location, no Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrower's agents

or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrower shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall, in Agent's discretion, use commercially reasonable efforts to obtain an Access Agreement or other acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(f) Upon request of Agent, Borrower shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible personal property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrower shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(g) As of the Closing Date and each subsequent date that the representations and warranties under this Agreement are remade, all Deposit Accounts, Securities Accounts, Commodity Accounts or other bank accounts or investment accounts owned by Borrower, together with the purpose of such accounts and the financial institutions at which such accounts reside, are listed on the **Disclosure Schedule**.

(h) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements and/or Personal Property Security Act financing statements relating to its Liens on all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Any financing statement may include a notice that any disposition of the Collateral in contravention of this Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of Agent and the Lenders under the Code.

(i) As of the Closing Date, no Borrower holds, and after the Closing Date Borrower shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrower shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(j) Borrower shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows on the Closing Date, on the date of each Credit Extension, and on such other dates when such representations and warranties under this Agreement are made or deemed to be made:

5.1 Due Organization, Authorization, Power and Authority.

(a) Each Credit Party is duly organized, validly existing and in good standing (if applicable in such entity's jurisdiction of formation) in its respective jurisdiction of formation. Each Credit Party

has the power to own its assets and is qualified and licensed to do business and is in good standing (if applicable in such jurisdiction) in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. The Financing Documents have been duly authorized, executed and delivered by each Credit Party and constitute legal, valid and binding agreements enforceable in accordance with their terms. The execution, delivery and performance by each Credit Party of each Financing Document executed or to be executed by it is in each case within such Credit Party's powers.

(b) The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party do not (i) conflict with any of such Credit Party's organizational documents, including any unanimous shareholder agreement (as defined in section 108 of the *Business Corporations Act* (Ontario)) or any other shareholder agreement in effect; (ii) contravene, conflict with, constitute a default under or violate any Law; (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its property or assets may be bound or affected; (iv) require any action by, filing, registration, or qualification with, or Required Permit from, any Governmental Authority (except such Required Permits which have already been obtained and are in full force and effect); or (v) constitute a default or otherwise cause a breach under any Material Agreement. No Credit Party is in default under any agreement to which it is a party or by which it is bound in which the default would reasonably be expected to result in a Material Adverse Change.

5.2 Litigation. Except as disclosed on the **Disclosure Schedule** or, after the Closing Date, pursuant to Section 6.7, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Responsible Officers, threatened in writing against any Credit Party which involves the possibility of any judgment or liability of more than One Hundred Thousand Dollars (\$100,000) or that could result in a Material Adverse Change, or which questions the validity of the Financing Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing, nor does any Credit Party have reason to believe that any such actions, suits, proceedings or investigations are threatened.

5.3 No Material Deterioration in Financial Condition; Financial Statements. All financial statements for the Credit Parties delivered to Agent or any Lender fairly present, in conformity with GAAP, in all material respects the consolidated financial condition and consolidated results of operations of such Credit Party. There has been no material deterioration in the consolidated financial condition of any Credit Party from the most recent financial statements and projections submitted to Agent or any Lender. There has been no material adverse deviation from the most recent annual operating plan of Borrower delivered to Agent and the Lenders.

5.4 Solvency. No Credit Party (i) has committed any act of bankruptcy, (ii) is insolvent or unable to meet its obligations as they generally become due, for any reason, or has ceased paying its current obligations in the ordinary course of business as they generally become due, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (iii) has made any petition for a receiving order in bankruptcy, made a voluntary assignment in bankruptcy, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, or (iv) as of the Closing Date, is involved in, has initiated or has had initiated against it an Insolvency Proceeding. The aggregate property of each Canadian Credit Party is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all its obligations, due and accruing due. The fair value of the assets of each U.S. Credit Party (including goodwill *minus* disposition costs) exceeds the fair value of its liabilities. After giving effect to the transactions described in this Agreement, (a) no U.S. Credit Party is left with unreasonably small capital in relation to its business as presently conducted, and (b) each U.S. Credit Party is able to pay its debts (including trade debts) as they mature.

5.5 Subsidiaries; Investments; Margin Stock. Borrower and its Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, Borrower and its Subsidiaries do not own or hold any Margin Stock.

5.6 Tax Returns and Payments; Pension Contributions. Each Credit Party has timely filed all required tax returns and reports, and, except for those Taxes that are subject to a Permitted Contest, each Credit Party has

timely paid all foreign, federal, state and material local Taxes, assessments, deposits and contributions owed by such Credit Party. Other than as disclosed to Agent in accordance with Section 6.2, Borrower is unaware of any claims or adjustments proposed for any prior tax years of any Credit Party which could result in additional Taxes becoming due and payable by such Credit Party. No Credit Party nor any trade or business (whether or not incorporated) that is under common control with any Credit Party within the meaning of Section 414(b) or (c) of the IRC (and Sections 414(m) and (o) of the IRC for purposes of the provisions relating to Section 412 of the IRC) or Section 4001 of ERISA (an "ERISA Affiliate") (i) has failed to satisfy the "minimum funding standards" (as defined in and subject to Section 412 of or Section 302 of ERISA), whether or not waived, with respect to any Pension Plan, (ii) has incurred liability with respect to the withdrawal or partial withdrawal of any Credit Party or ERISA Affiliate from any Pension Plan or incurred a cessation of operations that is treated as a withdrawal, (iii) has incurred any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA), (iv) has had any "reportable event" as defined in Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the 30-day notice requirement is waived) occur with respect to any Pension Plan or (v) failed to maintain (1) each "plan" (as defined by and subject to Section 3(3) of ERISA) in compliance in all material respects with the applicable provisions of ERISA, the IRC and other federal or state laws, and (2) the tax qualified status of each plan (as defined above) intended to be so qualified.

5.7 Intellectual Property and License Agreements. A list of (i) all Registered Intellectual Property of each Credit Party and (ii) all Material License Agreements of each Credit Party, as of the Closing Date and, as updated pursuant to Section 6.14, is set forth on the **Intangible Assets Schedule**. Such **Intangible Assets Schedule** shall be prepared by Borrower in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens other than Permitted Liens. Each Patent is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party.

5.8 Regulatory Status. All of Borrower's Products and Regulatory Required Permits are listed on the **Products Schedule** and **Required Permits Schedule**, respectively (as updated from time to time pursuant to Section 6.14), and Borrower has delivered to Agent a copy of all Regulatory Required Permits requested by Agent as of the date hereof or to the extent requested by Agent pursuant to Section 6.16. With respect to each Product, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of Borrower, and have provided Agent and each Lender with all notices and other information required by Section 6.16, (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, by Borrower or a Subsidiary in material compliance with all applicable Laws and Regulatory Required Permits. As of the Closing Date, there have been no Regulatory Reporting Events.

5.9 Accuracy of Schedules and Perfection Certificate. All information set forth in the **Disclosure Schedule**, **Intangible Assets Schedule**, the **Required Permits Schedule** and the **Products Schedule** is true, accurate and complete as of the Closing Date, the date of delivery of the last Compliance Certificate and any other subsequent date on which Borrower is requested to update such certificate. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date, the date of each Credit Extension and each other subsequent date on which Borrower delivers an updated Perfection Certificate pursuant to Agent's request.

5.10 Canadian Pension Plans.

(a) Each of the Canadian DB Plans (if any) are fully funded on a solvency basis and going concern basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with GAAP).

(b) Each of the Canadian Pension Plans (if any) is duly registered under the Canadian Income Tax Act and any other applicable pension and benefit Laws that require registration of a Canadian Pension Plan (collectively, the "**Applicable Pension and Benefit Laws**"), has been administered in material compliance

with the Canadian Income Tax Act and such other Applicable Pension and Benefit Laws and no event has occurred which would reasonably be expected to cause the loss of such registered status.

(c) All material obligations of each of the Credit Parties (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements therefor have been performed on a timely basis.

(d) There are no outstanding disputes concerning the assets of the Canadian Pension Plans, except as would not reasonably be expected to result in a Material Adverse Change.

(e) As of the Closing Date, none of the Canadian Pension Plans is a Canadian DB Plan.

5.11 Legal Form. This Agreement is, and each Financing Document (subject to the performance of any perfection or registration formalities that may be required under applicable law) when duly executed and delivered by Borrower will be, in proper legal form under the laws of Borrower's jurisdiction of incorporation for the enforcement thereof against Borrower under such law, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other similar laws relating to or affecting the rights of creditors generally, and except as the enforceability of this Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law). All formalities required in each jurisdiction in which Borrower is incorporated for the validity and enforceability of each of the Financing Documents to which Borrower is a party have been accomplished, and no Taxes are required to be paid (other than those Taxes that have been duly paid by the applicable Credit Party) and no notarization is required, for the validity and enforceability thereof.

5.13 FCPA and Anti-Corruption Law. For the immediately preceding five year period, neither Borrower nor any of its Subsidiaries nor, to the knowledge of Borrower, any director, officer, agent, employee or other Person acting in such capacity on behalf of Borrower or any of its Subsidiaries, has taken any action, directly or indirectly, that would result in a violation by such Persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), the Corruption of Foreign Public Officials Act (Canada), as amended, or any other applicable anti-corruption law. No part of the proceeds of the Credit Extensions shall be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA. Borrower and its Subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws.

6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees as follows:

6.1 Organization and Existence; Government Compliance.

(a) Each Credit Party shall maintain its legal existence and good standing in its respective jurisdiction of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to result in a Material Adverse Change. If a Credit Party is not now a Registered Organization but later becomes one, Borrower shall promptly notify Agent of such occurrence.

(b) Each Credit Party shall comply with all Laws, ordinances and regulations to which it or its business locations is subject, the noncompliance with which would reasonably be expected to result in a Material Adverse Change. Each Credit Party shall obtain and keep in full force and effect and comply with all of the Required Permits, except where failure to have or maintain compliance with or effectiveness of such Required Permit could not reasonably be expected to result in a Material Adverse Change. Upon request of Agent or any Lender, each Credit Party shall promptly (and in any event within three (3) Business Days of such request) provide copies of any such obtained Required Permits to Agent. Borrower shall notify Agent within three (3) Business Days (but in any event prior to Borrower submitting any requests for Credit Extensions or release of any reserves) of the occurrence of any facts, events or circumstances known to a Borrower, whether threatened,

existing or pending, that could cause any Required Permit that is material to the business of the Credit Parties (taken as a whole) to become limited, suspended or revoked. Notwithstanding the foregoing, each Credit Party shall comply with Section 6.16 as it relates to Regulatory Required Permits and to the extent that there is a conflict between this Section and Section 6.16 as it relates to Regulatory Required Permits, Section 6.16 shall govern.

6.2 Financial Statements, Reports, Certificates.

(a) Each Credit Party shall deliver to Agent and each Lender: (i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared cash reconciliation covering such Credit Party's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent and each Lender; (ii) as soon as available, but no later than thirty (30) days after the last day of each fiscal quarter, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering such Credit Party's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent and each Lender; (iii) as soon as available, but no later than one hundred twenty (120) days after the last day of a Credit Party's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent and each Lender in its reasonable discretion; (iv) as soon as available after approval thereof by such Credit Party's governing board, but no later than thirty (30) days after the last day of such Credit Party's fiscal year, such Credit Party's financial projections for the current fiscal year including amendments or updates approved by the board of directors; (v) within five (5) days of delivery, copies of all material statements, reports and notices made available to all of such Credit Party's security holders or to any holders of Subordinated Debt; (vi) in the event that such Credit Party is or becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission ("SEC") or a link thereto on such Credit Party's or another website on the Internet; (vii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by a Credit Party, which statements may be provided to Agent and each Lender by Borrower or directly from the applicable institution(s); (viii) promptly (and in any event within ten (10) days of any request therefor) such readily available budgets, sales projections, operating plans, financial information and other information, reports or statements regarding the Credit Parties or their respective businesses, contractors and subcontractors reasonably requested by Agent or any Lender; and (ix) within ten (10) days after any Credit Party becomes aware of any claim or adjustment proposed for any prior tax years of any Credit Party or any of their Subsidiaries which could result in material additional Taxes becoming due and payable by such Credit Party or Subsidiary, notice of such claim or adjustment.

(b) Within thirty (30) days after the last day of each month, Borrower shall deliver to Agent and each Lender with the applicable monthly financial reporting described above, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Borrower shall, and shall cause each Credit Party to, (i) keep proper books of record and account in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities and (ii) make all such books of record and account available to Agent electronically at all times. Upon reasonable prior written notice and during business hours (which such limitations shall not apply if a Default or Event of Default has occurred), Borrower shall allow, and cause each Credit Party to allow, Agent and the Lenders to visit and inspect any properties of a Credit Party, to examine and make abstracts or copies from any Credit Party's books, to conduct a collateral audit and analysis of its operations and the Collateral to verify the amount and age of the accounts, the identity and credit of the respective account debtors, to review the billing practices of the Credit Party and to discuss its respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. Borrower shall reimburse Agent and each Lender for all reasonable costs and expenses associated with such visits and inspections; provided, however, that Borrower shall be required to reimburse Agent and each Lender for such costs and expenses for no more than one (1) such visit and inspection per twelve (12) month period unless a Default or Event of Default has occurred during such period.

(d) Borrower shall, and shall cause each Credit Party to, deliver to Agent and each Lender, within five (5) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that would reasonably be expected to have a material effect on any of the Required Permits material to Borrower's business or otherwise on the operations of Borrower or any of its Subsidiaries (except that reporting related to Regulatory Required Permits and/or Regulatory Reporting Events shall be governed by Section 6.16).

6.3 Maintenance of Property. Borrower shall cause all equipment and other tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in working order as of the date hereof, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Borrower shall cause each Credit Party to keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between a Credit Party and its Account Debtors shall follow the Credit Party's customary practices as they exist at the Closing Date. Borrower shall promptly notify Agent of all returns, recoveries, disputes and claims that involve more than Two Hundred and Fifty Thousand Dollars (\$250,000) of Inventory collectively among all Credit Parties.

6.4 Taxes; Pensions. Borrower shall timely file and cause each Credit Party to timely file, all required tax returns and reports and, except to the extent subject to a Permitted Contest, timely pay, and cause each Credit Party to timely pay, all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed, and shall deliver to Agent, on demand, appropriate certificates attesting to such payments. Borrower shall pay, and cause each Credit Party to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms. Each Credit Party and their ERISA Affiliates shall timely make all required contributions to each Pension Plan and shall maintain each "plan" (as defined by Section 3(3) of ERISA) in material compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal and state laws. Borrower shall give written notice to Agent and each Lender promptly (and in any event within ten (10) Business Days) upon Borrower becoming aware of any (i) Credit Party's or any ERISA Affiliate's failure to make any contribution required to be made with respect to any Pension Plan not having been timely made, (ii) notice of the PBGC's, any Credit Party's or any ERISA Affiliate's intention to terminate or to have a trustee appointed to administer any such Pension Plan, or (iii) complete or partial withdrawal by any Credit Party or any ERISA Affiliate from any Pension Plan.

6.5 Insurance. Borrower shall, and shall cause each Credit Party to, keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Agent. All property policies shall have a lender's loss payable endorsement showing Agent as sole lender's loss payee and waive subrogation against Agent, and all liability policies shall show, or have endorsements showing, Agent as an additional insured. No other loss payees may be shown on the policies unless Agent shall otherwise consent in writing (except a secured party or equipment lessor may be named loss payee with respect to any asset on which it has a Permitted Lien). If required by Agent, all policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Agent at least thirty (30) days' (ten (10) days' for non-payment of premium) notice before canceling, amending, or declining to renew its policy. At Agent's request, Borrower shall deliver copies of all such Credit Party insurance policies and evidence of all premium payments. If any Credit Party fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Agent, Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Agent deems prudent.

6.6 Collateral Accounts. Borrower shall, and shall cause each Credit Party to, provide Agent five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution. In addition, for each Collateral Account that any Credit Party at any time maintains (and in connection with any such Collateral Account established after the Closing Date, prior to opening such Collateral Account), Borrower shall, and shall cause each Credit Party to, cause the applicable bank or financial institution at or with which any such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument or agreement with respect to such Collateral Account that (a) ensures the perfection and priority of Agent's Lien in such Collateral Account in accordance with the terms hereunder to the extent necessary in the applicable jurisdiction

in which the Collateral Account is located, (b) provides that, upon written notice from Agent, such bank or financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Collateral Account without further consent by the applicable Credit Party, and (c) may not be terminated without prior written consent of Agent (except by the applicable bank or financial institution upon prior written notice to Agent in accordance with terms reasonably satisfactory to Agent). The provisions of the previous sentence shall not apply to (i) the TD Cash Collateral Accounts and (ii) deposit accounts exclusively used for payroll, payroll taxes and, in Agent's discretion, other employee wage and benefit payments to or for the benefit of a Credit Party's employees and identified to Agent by Borrower as such; *provided*, however, that at all times Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

6.7 Notices of Material Agreements, Litigation and Defaults: Cooperation in Litigation.

(a) Borrower shall promptly (and in any event within the time periods specified below) provide written notice to Agent and each Lender of the following:

(i) Within three (3) Business Days of Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default;

(ii) Within three (3) Business Days of Borrower becoming aware of (or having reason to believe any of the following are pending or threatened in writing) any action, suit, proceeding or investigation against Borrower or any Credit Party which involves the possibility of any judgment or liability of more than One Hundred Thousand Dollars (\$100,000) or that could result in a Material Adverse Change, or which questions the validity of any of the Financing Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing;

(iii) (A) Within three (3) Business Days of Borrower (1) executing and delivering any amendment, consent, waiver or other modification to any Material Agreement that is materially adverse to Borrower or that is adverse to Agent or any Lender or (2) receiving or delivering any notice of termination or default or similar notice in connection with any Material Agreement and (B) together with delivery of the next Compliance Certificate (included as an update to the **Disclosure Schedule** delivered therewith) the execution of any new Material Agreement and/or any new material amendment, consent, waiver or other modification to any Material Agreement not previously disclosed.

(b) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clause (a). From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

6.8 Creation/Acquisition of Subsidiaries. Borrower shall provide Agent with at least fifteen (15) Business Days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create or, to the extent permitted pursuant to this Agreement, acquire a new Subsidiary. Upon such creation or, to the extent permitted hereunder, acquisition of any Subsidiary, Borrower and such Subsidiary shall promptly (and in any event within fifteen (15) Business Days of such creation or acquisition) take all such action as may be reasonably required by Agent or the Required Lenders to cause each such Subsidiary to either, in the discretion of Agent, become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Financing Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on **Exhibit A** hereto); and Borrower shall grant and pledge to Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each

Subsidiary (the foregoing collectively, the “**Joinder Requirements**”); provided, that Borrower shall not be permitted to make any Investment in such Subsidiary until such time as Borrower has satisfied the Joinder Requirements.

6.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely for (a) transaction fees incurred in connection with the Financing Documents, (b) for working capital needs of Borrower and its Subsidiaries, and (c) any other Permitted Purpose specified in the Credit Facility Schedule for such Credit Facility. No portion of the proceeds of the Credit Extensions will be used for family, personal, agricultural or household use or to purchase Margin Stock.

6.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply in all material respects with all Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply in all material respects with each Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrower will provide Agent, within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent’s determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment would reasonably be expected to result in a Material Adverse Change.

(c) If there is any conflict between this Section 6.10 and any environmental indemnity agreement which is a Financing Document, the environmental indemnity agreement shall govern and control.

6.11 Power of Attorney. Each of the officers of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for each Borrower (without requiring any of them to act as such) with full power of substitution to do the following: (a) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral (in each case, so long as no Default or Event of Default has occurred, other than Permitted Liens), or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (b) so long as Agent has provided not less than three (3) Business Days’ prior written notice to Borrower to perform the same and Borrower has failed to take such action, (i) execute in the name of any Person comprising Borrower any schedules, assignments, instruments, documents, and statements that Borrower is obligated to give Agent under this Agreement or that Agent or any Lender deems necessary to perfect or better perfect Agent’s security interest or Lien in any Collateral, (ii) do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce, protect or preserve any Collateral or its rights therein, including, but not limited to, to sign Borrower’s name on any invoice or bill of lading for any Account or drafts against Account Debtors; and (iii) after the occurrence and during the continuance of an Event of Default, (A) endorse the name of any Borrower upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrower; (B) make, settle, and adjust all claims under Borrower’s insurance policies; (C) take any action any Credit Party is required to take under this Agreement or any other Financing Document; (D) transfer the Collateral into the name of Agent or a third party as the Code permits; (E) exercise any rights and remedies described in this Agreement or the other Financing Documents; and (F) do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce its rights with regard to any Collateral.

6.12 Further Assurances. Borrower shall, and shall cause each Credit Party to, promptly execute any further instruments and take further action as Agent reasonably requests to perfect or better perfect or continue Agent's Lien in the Collateral or to effect the purposes of this Agreement or any other Financing Document.

6.13 Post-Closing Obligations. Borrower shall, and shall cause each Credit Party to, complete each of the post-closing obligations and/or deliver to Agent each of the documents, instruments, agreements and information listed on the **Post-Closing Obligations Schedule** attached hereto, on or before the date set forth for each such item thereon (as the same may be extended by Agent in writing in its sole discretion), each of which shall be completed or provided in form and substance satisfactory to Agent and the Lenders.

6.14 Disclosure Schedule Updates. Borrower shall, in the event of any information in the **Disclosure Schedule** becoming outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next Compliance Certificate required to be delivered under this Agreement after such event, a proposed update to the **Disclosure Schedule** correcting all outdated, inaccurate, incomplete or misleading information; provided, however, (i) with respect to any proposed updates to the **Disclosure Schedule** involving Permitted Liens, Permitted Indebtedness or Permitted Investments, Agent will replace the **Disclosure Schedule** attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Indebtedness or Permitted Investments and (ii) with respect to any proposed updates to the **Disclosure Schedule** involving other matters, Agent will replace the applicable portion of the **Disclosure Schedule** attached hereto with such proposed update upon Agent's approval thereof.

6.15 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 6.2(b), to the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, or (B) Borrower enters into or becomes bound by any Material License Agreement, or (C) there occurs any other material change to the information listed on the **Intangible Assets Schedule**, deliver to Agent an updated **Intangible Assets Schedule** reflecting such updated information.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications to the extent they are addressed below), Borrower shall promptly execute such intellectual property security agreements (which shall be filed in the United States Patent and Trademark Office or the Canada Copyright Office, as applicable) and other documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such property. If Borrower decides to register any copyrights or mask works in the United States Copyright Office or the Canada Copyright Office (of the Canadian Intellectual Property Office), Borrower shall: (x) provide Agent with at least fifteen (15) days prior written notice of Borrower's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding Exhibits thereto) or the application it intends to file with the Canada Copyright Office; (y) execute an intellectual property security agreement and such other documents and provide such other information and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office or the Canada Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office or the Canada Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office or the Canada Copyright Office, as applicable.

(c) Borrower shall (x) take such steps as Agent requests to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for all Registered Intellectual Property and Material License Agreements to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such Registered Intellectual Property or Material License Agreement, whether now existing or entered into in the future, and (y) use commercially reasonable efforts to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for Agent to have the ability

in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any Material License Agreement or other agreement with respect to which Borrower is the licensee with respect to Intellectual Property that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

6.16 Regulatory Reporting and Covenants.

(a) Borrower shall notify Agent and each Lender promptly, and in any event within three (3) Business Days of receiving, becoming aware of or determining that, (each, a "Regulatory Reporting Event" and collectively, the "Regulatory Reporting Events"): (i) any Governmental Authority, specifically including the FDA is conducting or has conducted (A) if applicable, any investigation of Borrower's or its Subsidiaries' manufacturing facilities and processes for any Product (or any investigation of the facility of a contract manufacturer engaged by Borrower or its Subsidiaries in respect of a Product of which Borrower and/or its Subsidiaries are aware), which has disclosed any material deficiencies or violations of Laws and/or the Regulatory Required Permits related thereto or (B) an investigation or review of any Regulatory Required Permit (other than routine reviews in the Ordinary Course of Business associated with the renewal of a Regulatory Required Permit and which could not reasonably be expected to result in a Material Adverse Change), (ii) (A) any Governmental Authority has required that development, testing, and/or manufacturing of any Product should cease or (B) any development, testing, and/or manufacturing of any Product that is material to the business of the Credit Parties (taken as a whole) should cease for any reason, (iii) (A) if a Product has been approved for marketing and sale, (A) any Governmental Authority has required that any marketing or sales of such Product should cease or such Product should be withdrawn from the marketplace, or (B) with respect to any such Product that is material to the business of the Credit Parties (taken as a whole), the marketing and sale of such Product shall cease or such Product should be withdrawn from the marketplace for any reason, (iv) any Regulatory Required Permit has been revoked or withdrawn, (v) adverse clinical test results have occurred with respect to any Product to the extent that such results result in, or would reasonably be expected to result in a Material Adverse Change, (vi) any Product recalls or voluntary Product withdrawals from any market (other than with respect to discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) have occurred, or (vii) any significant failures in the manufacturing of any Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to Borrower therefor in any month shall decrease significantly with respect to the quantities of such Product and payments produced in the prior month. Borrower shall provide to Agent or any Lender such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any such Regulatory Reporting Event.

(b) Borrower shall, and shall cause each Credit Party to, obtain and, to the extent applicable, use commercially reasonable efforts to cause all third parties to obtain, all Regulatory Required Permits necessary for compliance in all material respects with Laws with respect to testing, manufacturing, developing, selling or marketing of Products and shall, and shall cause each Credit Party to, maintain and comply fully and completely in all respects with all such Regulatory Required Permits, the noncompliance with which would result in a Material Adverse Change. In the event Borrower or any Credit Party obtains any new Regulatory Required Permit or any information on the **Required Permits Schedule** becomes outdated, inaccurate, incomplete or misleading, Borrower shall, together with the next Compliance Certificate required to be delivered under this Agreement after such event, provide Agent with an updated **Required Permits Schedule** including such updated information.

(c) If, after the Closing Date, (i) Borrower determines to manufacture, sell, develop, test or market any new Product (by itself or through a third party), Borrower shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product) and, together with delivery of the next Compliance Certificate shall provide an updated **Intangible Assets Schedule, Products Schedule and Required Permits Schedule** (and copies of such Required Permits as Agent may request) reflecting any applicable updates related to such determination.

7. NEGATIVE COVENANTS

Borrower shall not do, nor shall it permit any Credit Party to do, any of the following without the prior written consent of Agent:

7.1 Dispositions. Convey, sell, abandon, lease, license, transfer, assign or otherwise dispose of (collectively, "**Transfer**") all or any part of its business or property, except for (a) sales, transfers or dispositions of Inventory in the Ordinary Course of Business; (b) sales or abandonment of (i) worn-out or obsolete Equipment or (ii) other Equipment that is no longer used or useful in the business of Borrower with a fair salable value not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate for all such Equipment; (c) to the extent they may constitute a Transfer, Permitted Liens; (d) to the extent they may constitute a Transfer, Permitted Investments; (e) Permitted Licenses; or (f) so long as no Event of Default has occurred and is continuing, Transfers to a Person that is a Borrower.

7.2 Changes in Business, Management, Ownership or Business Locations. (a) Engage in, or permit any of its Subsidiaries to engage in, any business other than the businesses currently engaged in by Borrower, such Credit Party or such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) (i) have a change in senior management where a suitable permanent replacement, as approved by Borrower's or such Credit Party's board of directors, has not been named and hired by not later than ninety (90) days after such change unless (except in the case of the chief executive officer or the vice president finance) Borrower's or such Credit Party's board of directors determines, in its reasonable discretion and in good faith, such replacement unnecessary, or (ii) enter into any transaction or series of related transactions which would result in a Change in Control unless the agreements with respect to such transactions provide for, as a condition precedent to the consummation thereof, either (x) the indefeasible payment in full of the Obligations or (y) the consent of Agent and the Lenders; (d) add any new offices or business locations, or enter into any new leases with respect to existing offices or business locations without first delivering a fully-executed Access Agreement to Agent (except as otherwise provided below); (e) change its jurisdiction of organization; (f) change its organizational structure or type; (g) change its legal name (except where Agent has received fifteen (15) Business Days prior written notice thereof and prior to consummating any such change all actions reasonably required by Agent to ensure compliance of Credit Parties under this Agreement, including those to continue the perfection of its Liens, have been taken); (h) change any organizational number (if any) assigned by its jurisdiction of organization or (i) change any other of its organizational documents (other than a change in registered agent, or a change that could not adversely affect the rights of Agent or the Lenders hereunder, without the prior written consent of Agent. Notwithstanding subpart (d) above, provided that the applicable lease, or applicable law, does not grant to the landlord any Lien upon intangible assets of the tenant, subpart (d) shall not restrict leases for (i) such new or existing offices or business locations containing less than One Hundred Thousand Dollars (\$100,000) in Borrower's assets or property and not containing Borrower's Books, (ii) such new or existing offices or business locations containing in excess of \$100,000 and which is not Borrower's corporate headquarters and, in any event, Borrower shall have used commercially reasonable efforts to obtain an Access Agreement with respect to such location and (iii) any new or existing business location constituting a warehouse, consignee or bailee location that does not contain any of Borrower's Books and would not otherwise require an Access Agreement pursuant to the criteria set forth in Section 4.2(e).

7.3 Mergers or Acquisitions. Merge or consolidate with any other Person, or acquire all or substantially all of the capital stock or property of or make any Investment in another Person; *provided, however*, that a Subsidiary of Borrower may merge or consolidate into another Subsidiary that is a Borrower, so long as (a) Borrower has provided Agent with prior written notice of such transaction, (b) a Person already comprising the Borrower shall be the surviving legal entity, (c) Borrower's tangible net worth is not thereby reduced, (d) no Event

of Default has occurred and is continuing prior thereto or arises as a result thereof, and (e) Borrower shall be in compliance with the covenants set forth in this Agreement both before and after giving effect to such transaction.

7.4 Indebtedness. (a) Create, incur, assume, or be liable for any Indebtedness other than Permitted Indebtedness or (b) purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (other than with respect to the Obligations as described in Section 2.3) prior to its scheduled maturity.

7.5 Encumbrance. (a) Create, incur, allow, or suffer any Lien on any of its property, except for Permitted Liens, (b) permit any Collateral to fail to be subject to a first priority security interest in favor of Agent, for the ratable benefit of the Lenders, except for Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent, or (c) enter into any agreement, document, instrument or other arrangement (except with or in favor of Agent) with any Person after the Closing Date which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning by way of security, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Collateral or Intellectual Property, except (i) as is otherwise permitted in the definition of "Permitted Liens" herein and (ii) for immaterial agreements containing customary provisions which prohibit or have the effect of prohibiting Borrower or such Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering such immaterial agreement, *provided* that such prohibition (x) applies only to such immaterial agreement and (y) is enforceable under applicable law (including without limitation Sections 9-406, 9-407 and 9-408 of the UCC).

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account, except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments; Margin Stock. (a) Pay any dividends (other than (i) dividends payable solely in common stock or (ii) dividends paid by any Subsidiary of a Borrower to a Borrower) or make any distribution or payment with respect to or redeem, retire or purchase or repurchase any of its equity interests (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar plans), or (b) directly or indirectly make any Investment (including, without limitation, any additional Investment in any Subsidiary) other than Permitted Investments. Without limiting the foregoing, Borrower shall not, and shall not permit any of its Subsidiaries or any Credit Party to, purchase or carry Margin Stock.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Credit Party, except for (a) transactions that are in the Ordinary Course of Business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions with Subsidiaries that are designated as a Borrower hereunder and that are not otherwise prohibited by Article 7 of this Agreement, and (c) transactions permitted by Section 7.7 of this Agreement.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except to the extent expressly permitted to be made pursuant to the terms of the Subordination Agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt other than as may be expressly permitted pursuant to the terms of any applicable Subordination Agreement to which such Subordinated Debt is subject.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended or undertake as one of its important activities extending credit to purchase or carry Margin Stock, or use the proceeds of any Credit Extension for that purpose; (i) fail, or permit any ERISA Affiliate to fail, to meet "minimum funding standards" (as defined in and subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived, (ii) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) a "reportable event" as defined in and subject to Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the 30-day notice requirement is waived) to occur, (iii) engage in any "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in liability in

excess of One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate or that would reasonably be expected to result in a Material Adverse Change; (iv) fail to comply with the Federal Fair Labor Standards Act that could result in liability in excess of One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate or that would reasonably be expected to result in a Material Adverse Change; (v) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) the withdrawal from participation in any Pension Plan or Canadian DB Plan except as would not reasonably be expected to result in a Material Adverse Change, or (vi) incur, or permit any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof to incur, any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA). Neither the Borrower nor any Credit Party shall establish a Canadian DB Plan without the prior written consent of Agent or the Lenders.

7.11 Amendments to Organization Documents and Material Agreements. Amend, modify or waive any provision of (a) any Material Agreement in a manner that is materially adverse to Agent or any Lender, that pertains to rights to assign or grant a security interest in such Material Agreement or that could or could reasonably be expected to result in a Material Adverse Change, or (b) any of its organizational documents (other than a change in registered agents, any change expressly permitted by Section 7.2 or a change that could not adversely affect the rights of Agent or Lenders hereunder), in each case, without the prior written consent of Agent. Borrower shall provide to Agent copies of all material amendments, waivers and modifications of any Material Agreement and all amendments, waivers or modifications of any organizational documents.

7.12 Compliance with Anti-Terrorism Laws.

(a) Directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower shall immediately notify Agent if Borrower has knowledge that Borrower or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not, nor will Borrower permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law. Agent hereby notifies Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and its principals, which information includes the name and address of Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws.

(b) Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada)* and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, "**AML Legislation**"), Lenders and Agent may be required to obtain, verify and record information regarding the Credit Parties, their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Credit Party, and the transactions contemplated hereby. Credit Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective permitted assign or participant of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. If Agent has ascertained the identity of any Credit Party or any authorized signatories of any Credit Party for the purposes of applicable AML Legislation, then Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and Agent within the meaning of applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Lender agrees that Agent has no obligation to ascertain the identity of any Credit Party or any authorized signatories thereof on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from Borrower or any such authorized signatory in doing so.

(c) Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the Corruption of Foreign Public Officials Act (Canada), the FCPA or other similar legislation in other jurisdictions. Each Credit Party shall conduct its businesses in compliance with applicable anti-corruption laws.

8. RESERVED

9. RESERVED

10. EVENTS OF DEFAULT

10.1 Events of Default. The occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an “**Event of Default**” and Credit Parties shall thereupon be in default under this Agreement and each of the other Financing Documents:

(a) Borrower fails to (i) make any payment of principal or interest on any Credit Extension on its due date, or (ii) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 10.2 hereof);

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and which occurrences thereby constitute immediate Events of Default) and, to the extent appropriate action can be taken to remedy, such default is not remedied by the Credit Party or waived by Agent within ten (10) days after the earlier of (i) the date of receipt by any Borrower of notice from Agent or the Required Lenders of such default, or (ii) the date an officer of such Credit Party becomes aware, or through the exercise of reasonable diligence should have become aware, of such default;

(c) any Credit Party defaults in the performance of or compliance with any term contained in Section 6.2, 6.4, 6.6, 6.7(a), 6.8, 6.9, 6.13, 6.15 or 6.16, or Article 7;

(d) any representation, warranty, certification or statement made by any Credit Party or any other Person acting for or on behalf of a Credit Party (i) in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document, or (ii) to induce Agent and/or Lenders to enter into this Agreement or any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(e) (i) any Credit Party defaults under or breaches any Material Agreement (after any applicable grace period contained therein), or a Material Agreement shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Agreement to which it is a party, in each case which would reasonably be expected to result in a Material Adverse Change, (ii) (A) any Credit Party fails to make (after any applicable grace period) any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise) on any Indebtedness (other than the Obligations) of such Credit Party or such Subsidiary having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all

creditors under any combined or syndicated credit arrangement) of more than Fifty Thousand Dollars (\$50,000) (“**Material Indebtedness**”), (B) any other event shall occur or condition shall exist under any contractual obligation relating to any such Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of (without regard to any subordination terms with respect thereto), the maturity of such Material Indebtedness or (C) any such Material Indebtedness shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, (iii) any Credit Party defaults (beyond any applicable grace period) under any obligation for payments due or otherwise under any lease agreement for such Credit Party’s principal place of business or any place of business that meets the criteria for the requirement of an Access Agreement under Section 7.2 or for which an Access Agreement exists or was required to be delivered, and the effect of such default is to cause the termination of such lease, (iv) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations, or the occurrence of any event requiring the prepayment of any Subordinated Debt, or the delivery of any notice with respect to any Subordinated Debt or pursuant to any Subordination Agreement that triggers the start of any standstill or similar period under any Subordination Agreement, or (v) any Borrower makes any payment on account of any Indebtedness that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(f) (i) any Credit Party shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against any Credit Party seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order (including without limitation any petition or application being filed or made or other proceeding instituted against such Credit Party seeking a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or any analogous procedure or step is taken in any other jurisdiction), in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) such Credit Party, either such proceedings shall remain undismissed or unstayed for a period of thirty (30) days or more or any action sought in such proceedings shall occur, (iii) any Credit Party shall take any corporate or similar action or any other action to authorize any action described in clause (i) or (ii) above or (iv) any Canadian Credit Party shall commit an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), or makes an assignment of its property for the general benefit of its creditors under such Act, or makes a proposal (or files a notice of its intention to do so) under such Act or any analogous procedure or step is taken in any other jurisdiction;

(g) (i) the service of process seeking to attach, execute or levy upon, seize or confiscate any Collateral Account, any Intellectual Property, or any funds of any Credit Party on deposit with Agent, any Lender or any Affiliate of Agent or any Lender, or (ii) a notice of lien, levy, or assessment is filed against any assets of a Credit Party by any government agency, and the same under subclauses (i) and (ii) hereof are not discharged or stayed (whether through the posting of a bond or otherwise) prior to the earlier to occur of ten (10) days after the occurrence thereof or such action becoming effective;

(h) (i) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business, (ii) the institution by any Governmental Authority of criminal proceedings against any Credit Party, or (iii) one or more judgments or orders for the payment of money (not paid or fully covered by insurance and as to which the relevant insurance company has acknowledged coverage in writing) aggregating in excess of One Hundred Thousand Dollars (\$100,000) shall be rendered against any or all Credit Parties and either (A) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (B) there shall be any period of ten (10) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect,

(i) any Lien created by any of the Financing Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert; any provision of any Financing Document shall fail to be valid and binding on, or enforceable against, a Credit Party, or any Credit Party shall so assert;

(j) (i) a Change in Control occurs or (ii) any Credit Party or direct or indirect equity owner in a Credit Party shall enter into an agreement which contemplates a Change in Control (unless such agreement is either (A) non-binding on such Credit Party or (B) provides for, as a condition precedent to the consummation of such agreement, either (x) the indefeasible payment in full in cash of all Obligations or (y) the consent of Agent and the Lenders);

(k) any Required Permit shall have been (i) revoked, rescinded, suspended, modified in a materially adverse manner or not renewed in the Ordinary Course of Business for a full term, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Required Permit or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or non-renewal has, or would reasonably be expected to result in, a Material Adverse Change;

(l) (i) The voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category which would reasonably be expected to result in a Material Adverse Change, (ii) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, results in, or would reasonably be expected to result in, a Material Adverse Change, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by DEA, FDA, or any other Governmental Authority which results in, or would reasonably be expected to result in, a Material Adverse Change, or (iv) the occurrence of confirmed adverse test results in connection with a Product which would result in a Material Adverse Change;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange; or

(n) the occurrence of any fact, event or circumstance that would reasonably be expected to result in a Material Adverse Change.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to any Borrower in connection with each such failure any notice to which Borrower would be entitled under this Section 10.1 before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrower any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

10.2 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Agent may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i)

deliver notice of the Event of Default to Borrower, (ii) by notice to any Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 10.1(f) occurs all Obligations shall be immediately due and payable without any action by Agent or the Lenders), or (iii) by notice to any Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between any Credit Party and Agent and/or the Lenders (but if an Event of Default described in Section 10.1(f) occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Agent and/or the Lenders shall be immediately terminated without any action by Agent or the Lenders).

(b) Without limiting the rights of Agent and the Lenders set forth in Section 10.2(a) above, upon the occurrence and during the continuance of an Event of Default, Agent shall have the right, without notice or demand, to do any or all of the following:

(i) with or without legal process, enter any premises where the Collateral may be and take possession of and remove the Collateral from the premises or store it on the premises, and foreclose upon and/or sell, lease or liquidate, the Collateral, in whole or in part;

(ii) apply to the Obligations (A) any balances and deposits of any Credit Party that Agent or any Lender or any Affiliate of Agent or a Lender holds or controls, or (B) any amount held or controlled by Agent or any Lender or any Affiliate of Agent or a Lender owing to or for the credit or the account of any Credit Party;

(iii) settle, compromise or adjust and grant releases with respect to disputes and claims directly with Account Debtors for amounts on terms and in any order that Agent considers advisable, notify any Person owing any Credit Party money of Agent's security interest in such funds, and verify the amount of such Account;

(iv) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Agent requests and make it available as Agent designates. Agent may also render any or all of the Collateral unusable at a Credit Party's premises and may dispose of such Collateral on such premises without liability for rent or costs. Borrower grants Agent a license to enter and occupy any of its premises, without charge, to exercise any of Agent's rights or remedies;

(v) pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred;

(vi) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. In connection with Agent's exercise of its rights under this Article 10, Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral (and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof) and Borrower's rights under all licenses and all franchise agreements shall be deemed to inure to Agent for the benefit of the Lenders;

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

(viii) demand and receive possession of the Books of Borrower and the other Credit Parties; and

(ix) exercise all other rights and remedies available to Agent under the Financing Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof) and the Personal Property Security Act.

10.3 Notices. Any notice that Agent is required to give to a Credit Party under the UCC or the Personal Property Security Act of the time and place of any public sale or the time after which any private sale or other intended disposition of the Collateral is to be made shall be deemed to constitute reasonable notice if such notice is given in accordance with this Agreement at least five (5) days prior to such action.

10.4 Protective Payments. If any Credit Party fails to pay or perform any covenant or obligation under this Agreement or any other Financing Document, Agent may pay or perform such covenant or obligation, and all amounts so paid by Agent are Protective Advances and immediately due and payable, bearing interest at the then highest applicable rate for the Credit Facilities hereunder, and secured by the Collateral, provided that, so long as no Event of Default has occurred and is continuing, Agent has provided not less than three (3) Business Days' prior written notice to Borrower to pay or perform same and Borrower has failed to take such action. No such payments or performance by Agent shall be construed as an agreement to make similar payments or performance in the future or constitute Agent's waiver of any Event of Default.

10.5 Liability for Collateral No Waiver; Remedies Cumulative. So long as Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Agent and the Lenders, Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral. Agent's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Financing Document shall not waive, affect, or diminish any right of Agent thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Agent and then is only effective for the specific instance and purpose for which it is given. Agent's rights and remedies under this Agreement and the other Financing Documents are cumulative. Agent has all rights and remedies provided under the Code, the Personal Property Security Act, by Law, or in equity. Agent's exercise of one right or remedy is not an election, and Agent's waiver of any Event of Default is not a continuing waiver. Agent's delay in exercising any remedy is not a waiver, election, or acquiescence.

10.6 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (i) Borrower, for itself and the other Credit Parties, irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower and the Credit Parties on the one hand and Agent and the Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, and (ii) unless Agent and the Lenders shall agree otherwise, the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: *first*, to the Protective Advances; *second*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); *third*, to the principal amount of the Obligations outstanding; and *fourth*, to any other indebtedness or obligations of the Credit Parties owing to Agent or any Lender under the Financing Documents. Borrower shall remain fully liable for any deficiency. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. Unless Agent and the Lenders shall agree otherwise, in carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

10.7 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment,

dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents and hereby ratifies and confirms whatever Agent or the Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's entry upon the premises of a Borrower, the taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by any Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Credit Facilities or to any subsequent disbursement of Credit Extensions, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future Credit Extensions and Agent may at any time after such acquiescence require Borrower to comply with all such requirements. Any forbearance by Agent or a Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Credit Facilities, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Financing Documents or as a reinstatement of the Obligations or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Obligations, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and the Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or the Lenders shall remain in full force and effect until Agent or the Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrower and the Financing Documents and other security instruments or agreements securing the Obligations have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations.

(e) Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrower's obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrower's obligations under the Financing Documents. To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any

equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or the Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

10.8 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and the Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section 10.8 as if this Section 10.8 were a part of each Financing Document executed by such Credit Party.

10.9 Other Currency. Without limiting Section 2.6(c) or any other provision of this Agreement, to the extent permitted by applicable Law, the obligations of any of the Credit Parties in respect of any amount due under this Agreement shall, notwithstanding any payment in any other currency (the "**Other Currency**") (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the "**Agreed Currency**") that the Agent or the Lenders may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day immediately after the day on which the Agent or any Lender receives the payment. If the amount of the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, such Credit Party shall pay all additions amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of a Credit Party not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Section 10.9, continue in full force and effect.

11. NOTICES

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

If to Borrower:

Impopharma Inc.
255 Spinnaker Way, Unit 6
Concord, Ontario L4K 4J1 Canada
Attention: Christine Mundkur
Fax: (905) 760-0235
E-Mail: cmundkur@impopharma.com

With a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2 Canada
Attn: Gayle Noble
Phone: (514) 397-3205
Fax: (514) 397-3605
Email: gnoble@stikeman.com

If to Agent or to MidCap (or any of its Affiliates or Approved Funds) as a Lender:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Account Manager for Impopharma transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Legal
Facsimile: 301-941-1450
Email: legalnotices@midcapfinancial.com

If to any Lender other than MidCap: at the address set forth in the signature pages to this Agreement or provided as a notice address for such in connection with any assignment hereunder.

12. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

12.1 THIS AGREEMENT, EACH SECURED PROMISSORY NOTE AND EACH OTHER FINANCING DOCUMENT (EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), AND THE RIGHTS, REMEDIES AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT OR SUCH FINANCING DOCUMENT (EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES AND ALL OTHER MATTERS RELATING HERETO, THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. NOTWITHSTANDING THE FOREGOING, AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND THE LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF MARYLAND AND ANY SUCH OTHER JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED

UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

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

12.3 Borrower, Agent and each Lender agree that each Credit Extension (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

12.4 **CONFESSION OF JUDGMENT.** UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, EACH BORROWER AUTHORIZES ANY ATTORNEY ADMITTED TO PRACTICE BEFORE ANY COURT OF RECORD IN THE UNITED STATES OR THE CLERK OF SUCH COURT TO APPEAR ON BEHALF OF SUCH BORROWER IN ANY COURT IN ONE OR MORE PROCEEDINGS, OR BEFORE ANY CLERK THEREOF OR PROTHONOTARY OR OTHER COURT OFFICIAL, AND TO CONFESS JUDGMENT AGAINST BORROWER IN FAVOR OF AGENT (FOR THE BENEFIT OF ALL LENDERS) IN THE FULL AMOUNT DUE ON THIS AGREEMENT (INCLUDING PRINCIPAL, ACCRUED INTEREST AND ANY AND ALL CHARGES, FEES AND COSTS) PLUS ATTORNEYS' FEES EQUAL TO FIFTEEN PERCENT (15%) OF THE AMOUNT DUE (EXCEPT THAT AGENT SHALL NOT SEEK TO COLLECT AN AMOUNT IN EXCESS OF ITS ACTUAL ATTORNEYS' FEES), PLUS COURT COSTS, ALL WITHOUT PRIOR NOTICE OR OPPORTUNITY OF SUCH BORROWER FOR PRIOR HEARING. EACH BORROWER AGREES AND CONSENTS THAT VENUE AND JURISDICTION SHALL BE PROPER IN THE CIRCUIT COURT OF ANY COUNTY OF THE STATE OF MARYLAND. THE AUTHORITY AND POWER TO APPEAR FOR AND ENTER JUDGMENT AGAINST A BORROWER SHALL NOT BE EXHAUSTED BY ONE OR MORE EXERCISES THEREOF, OR BY ANY IMPERFECT EXERCISE THEREOF, AND SHALL NOT BE EXTINGUISHED BY ANY JUDGMENT ENTERED PURSUANT THERETO; SUCH AUTHORITY AND POWER MAY BE EXERCISED ON ONE OR MORE OCCASIONS FROM TIME TO TIME, IN THE SAME OR DIFFERENT JURISDICTIONS, AS OFTEN AS AGENT SHALL DEEM NECESSARY, CONVENIENT, OR PROPER.

13. GENERAL PROVISIONS

13.1 Successors and Assigns.

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Agent's prior written consent (which may be granted or withheld in Agent's discretion). Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Applicable Commitment and/or Credit Extensions, together with all related obligations of such Lender hereunder. Borrower and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Agent shall have received and accepted an effective assignment agreement in form and substance acceptable to Agent, executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Agent reasonably shall require. Notwithstanding anything set forth in this Agreement to the contrary, any Lender may at any time pledge or assign a security interest in all or

any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. If requested by Agent, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of an Applicable Commitment or Credit Extension to an assignee hereunder, (ii) make Borrower's management available to meet with Agent and prospective participants and assignees of Applicable Commitments or Credit Extensions and (iii) assist Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of an Applicable Commitment or Credit Extension reasonably may request.

(b) From and after the date on which the conditions described above have been met, (i) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such assignment agreement, shall have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such assignment agreement, shall be released from its rights and obligations hereunder (other than those that survive termination). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective assignment agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) secured notes in the aggregate principal amount of the Eligible Assignee's Credit Extensions or Applicable Commitments (and, as applicable, secured promissory notes in the principal amount of that portion of the principal amount of the Credit Extensions or Applicable Commitments retained by the assigning Lender).

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at its offices located in Bethesda, Maryland a copy of each assignment agreement delivered to it and a Register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount (and stated interest) of the Credit Extensions owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "**Participant Register**"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Credit Extensions (including any Secured Promissory Notes evidencing such Credit Extensions) are registered obligations, the right, title and interest of the Lenders and their assignees in and to such Credit Extensions shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Agreement shall be construed so that the Credit Extensions are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and Section 5f.103-1(c) of the United States Treasury Regulations.

13.2 Indemnification.

(a) Borrower hereby agrees to promptly pay (i) (A) all costs and expenses of Agent (including, without limitation, the costs, expenses and reasonable fees of counsel to, and independent appraisers and consultants retained by, Agent) in connection with the examination, review, due diligence investigation,

documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, and in connection with the continued administration of the Financing Documents including (1) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (2) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, Personal Property Security Act searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons), and (B) costs and expenses of Agent in connection with the performance by Agent of its rights and remedies under the Financing Documents; (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the Credit Extensions to be made hereunder; and (v) all costs and expenses incurred by Agent or the Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or the Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrower further agrees that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Borrower hereby agrees to indemnify, pay and hold harmless Agent and the Lenders and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Agent and the Lenders (collectively called the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the disbursements and reasonable fees of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or the Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the Credit Facilities, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrower under this Section 13.2 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO ANY CREDIT PARTY OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

13.3 Time of Essence. Time is of the essence for the payment and performance of the Obligations in this Agreement.

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

13.5 Correction of Financing Documents. Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Financing Documents consistent with the agreement of the parties.

13.6 Integration. This Agreement and the other Financing Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Financing Documents merge into this Agreement and the Financing Documents.

13.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

13.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 13.2 to indemnify each Lender and Agent shall survive until the statute of limitations with respect to such claim or cause of action shall have run. All powers of attorney and appointments of Agent or any Lender as Borrower's attorney in fact hereunder, and all of Agent's and Lenders' rights and powers in respect thereof, are coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been fully repaid and performed and Agent's and the Lenders' obligation to provide Credit Extensions terminates.

13.9 Confidentiality. In handling any confidential information of Borrower, each of the Lenders and Agent shall use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Financing Document and designated in writing by any Credit Party as confidential, but disclosure of information may be made: (a) to the Lenders' and Agent's Subsidiaries or Affiliates; (b) to prospective permitted transferees and participants; *provided* that any such Persons are bound by customary obligations of confidentiality; (c) as required by Law, regulation, subpoena, order or other legal, administrative, governmental or regulatory request; (d) to regulators or as otherwise required in connection with an examination or audit, or to any nationally recognized rating agency; (e) as Agent or any Lender considers appropriate in exercising remedies under the Financing Documents; (f) to financing sources that are advised of the confidential nature of such information and are instructed to keep such information confidential; (g) to third party service providers of the Lenders and/or Agent so long as such service providers are bound to such Lender or Agent by obligations of confidentiality; (h) to the extent necessary or customary for inclusion in league table measurements; and (i) in connection with any litigation or other proceeding to which such Lender or Agent or any of their Affiliates is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Affiliates referring to a Lender or Agent or any of their Affiliates. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Agent's possession when disclosed to the Lenders and/or Agent, or becomes part of the public domain after disclosure to the Lenders and/or Agent; or (ii) is disclosed to the Lenders and/or Agent by a third party, if the Lenders and/or Agent does not know that the third party is prohibited from disclosing the information. Agent and/or Lenders may use confidential information for the development of client databases, reporting purposes, and market analysis, so long as Agent and/or Lenders, as applicable, do not disclose Borrower's identity or the identity of any Person associated with Borrower unless otherwise permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 13.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 13.9.

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

13.11 Publicity. Borrower will not directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable Law, subpoena or judicial or similar order, in which case Borrower shall endeavor to give Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorizes each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agrees that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, such authorization shall be subject to such Lender providing Borrower and the other Lenders with an opportunity to review and confer with such Lender regarding, and approve, the contents of any such tombstone, advertisement or information, as applicable, prior to its initial submission for publication, but subsequent publications of the same tombstone, advertisement or information shall not require Borrower's approval.

13.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

13.13 Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or the Lenders with respect to any matter that is the subject of this Agreement or the other Financing Documents may be granted or withheld by Agent and the Lenders in their sole and absolute discretion and credit judgment.

13.14 Amendments; Required Lenders; Inter-Lender Matters.

(a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document, no approval or consent thereunder, or any consent to any departure by Borrower therefrom (in each case, other than amendments, waivers, approvals or consents deemed ministerial by Agent), shall in any event be effective unless the same shall be in writing and signed by Borrower, Agent and Required Lenders. Except as set forth in clause (b) below, all such amendments, modifications, terminations or waivers requiring the consent of the "Lenders" shall require the written consent of Required Lenders.

(b) No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document shall, unless in writing and signed by Agent and by each Lender directly affected thereby: (i) increase or decrease the Applicable Commitment of any Lender (which shall be deemed to affect all Lenders), (ii) reduce the principal of or rate of interest on any Obligation or the amount of any fees payable hereunder, (iii) postpone the date fixed for or waive any payment of principal of or interest on any Credit Extension, or any fees or reimbursement obligation hereunder, (iv) release all or substantially all of the

Collateral, or consent to a transfer of any of the Intellectual Property, in each case, except as otherwise expressly permitted in the Financing Documents (which shall be deemed to affect all Lenders), (v) subordinate the lien granted in favor of Agent securing the Obligations (which shall be deemed to affect all Lenders, except as otherwise provided below), (vi) release a Credit Party from, or consent to a Credit Party's assignment or delegation of, such Credit Party's obligations hereunder and under the other Financing Documents or any Guarantor from its guaranty of the Obligations (which shall be deemed to affect all Lenders) or (vii) amend, modify, terminate or waive this Section 13.14(b) or the definition of "Required Lenders" or "Pro Rata Share" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender. For purposes of the foregoing, no Lender shall be deemed affected by (i) waiver of the imposition of the Default Rate or imposition of the Default Rate to only a portion of the Obligations, (ii) waiver of the accrual of late charges, (iii) waiver of any fee solely payable to Agent under the Financing Documents, (iv) subordination of a lien granted in favor of Agent provided such subordination is limited to equipment being financed by a third party providing Permitted Indebtedness. Notwithstanding any provision in this Section 13.14 to the contrary, no amendment, modification, termination or waiver affecting or modifying the rights or obligations of Agent hereunder shall be effective unless signed by Agent and Required Lenders

(c) Agent shall not grant its written consent to any deviation or departure by Borrower or any Credit Party from the provisions of Article 7 without the prior written consent of the Required Lenders. Required Lenders shall have the right to direct Agent to take any action described in Section 10.2(b). Upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all remedies referenced in Section 10.2 without the written consent of Required Lenders following the occurrence of an "Exigent Circumstance" (as defined below). All matters requiring the satisfaction or acceptance of Agent in the definition of Subordinated Debt shall further require the satisfaction and acceptance of each Required Lender. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. As used in this Section, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Agent, imminently threatens the ability of Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Agent, could result in a material diminution in value of the Collateral.

13.15 Borrower Liability. If there is more than one entity comprising Borrower, then (a) any Borrower may, acting singly, request Credit Extensions hereunder, (b) each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder, (c) each Borrower shall be jointly and severally obligated to pay and perform all obligations under the Financing Documents, including, but not limited to, the obligation to repay all Credit Extensions made hereunder and all other Obligations, regardless of which Borrower actually receives said Credit Extensions, as if each Borrower directly received all Credit Extensions, and (d) each Borrower waives (1) any suretyship defenses available to it under the Code or any other applicable law, and (2) any right to require the Lenders or Agent to: (A) proceed against any Borrower or any other person; (B) proceed against or exhaust any security; or (C) pursue any other remedy. The Lenders or Agent may exercise or not exercise any right or remedy they have against any Credit Party or any security (including the right to foreclose by judicial or non-judicial sale) without affecting any other Credit Party's liability or any Lien against any other Credit Party's assets. Notwithstanding any other provision of this Agreement or other related document, until the indefeasible payment in cash in full of the Obligations (other than inchoate indemnity obligations for which no claim has yet been made) and termination of the Applicable Commitments, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of the Lenders and Agent under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Credit Party, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by any Credit Party with respect to the Obligations in connection with this Agreement 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 a Credit Party with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is

made to a Credit Party in contravention of this Section, such Credit Party shall hold such payment in trust for the Lenders and Agent and such payment shall be promptly delivered to Agent for application to the Obligations, whether matured or unmatured.

13.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

13.17 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrower in accordance with the USA PATRIOT Act.

13.18 Warrants. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders by any Credit Party, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

13.19 Process Agent. Each Credit Party that is incorporated under the laws of a jurisdiction other than the United States (or any state thereof) hereby irrevocably designates, appoints, authorizes and empowers Corporate Creations Network Inc. with an office located at 2 Wisconsin Circle #700, Chevy Chase, MD 20815 on the date hereof (the "**Process Agent**"), as its agent to receive on behalf of itself, service of copies of the summons and complaint and any other process which may be served in any suit, action or proceeding brought in connection with this Agreement in the circuit court of any county of the state of Maryland, and any appellate court thereof. To the fullest extent permitted by applicable laws, such service may be made by mailing or delivering a copy of such process to such Credit Party in care of the Process Agent at its address specified above, and each such Credit Party hereby authorizes and directs the Process Agent to receive such service on its behalf. The appointment of the Process Agent shall be irrevocable by each such Credit Party until the appointment of a successor Process Agent. Each such Credit Party further agrees promptly to appoint a successor Process Agent in Maryland (which shall accept such appointment in form and substance satisfactory to Agent) prior to the termination for any reason of the appointment of the initial Process Agent. Nothing in this Section 13.19 shall affect the right of any party hereto to serve process in any manner permitted by applicable law or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

14. AGENT

14.1 Appointment and Authorization of Agent. Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Financing Document, together with such powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Agent and the Lenders and none of Credit Parties nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. The duties of Agent shall be mechanical and administrative in nature. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Financing Document, Agent shall not have any duties or responsibilities, except

those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Financing Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (a) act as collateral agent for Agent and each Lender for purposes of the perfection of all liens created by the Financing Documents and all other purposes stated therein, (b) manage, supervise and otherwise deal with the Collateral, (c) take such other action as is necessary or desirable to maintain the perfection and priority of the liens created or purported to be created by the Financing Documents, (d) except as may be otherwise specified in any Financing Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Financing Documents, applicable law or otherwise and (e) execute any amendment, consent or waiver under the Financing Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

14.2 Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) fifty percent (50%) or more of the Credit Extensions or Applicable Commitments then held by Agent (in its capacity as a Lender), in each case without the consent of the Lenders or Borrower. Following any such assignment, Agent shall give notice to the Lenders and Borrower. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrower and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this subsection (b).

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor's appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this subsection (c)). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent and its sub-agents in

respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

14.3 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Financing Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct. Any such Person to whom Agent delegates a duty shall benefit from this Article 14 to the extent provided by Agent.

14.4 Liability of Agent. Except as otherwise provided herein, no "Agent-Related Person" (as defined below) shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Credit Party or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document, or for any failure of any Credit Party or any other party to any Financing Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Financing Document, or to inspect the Collateral, other properties or books or records of any Credit Party or any Affiliate thereof. The term "**Agent-Related Person**" means Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; provided, however, that no Agent-Related Person shall be an Affiliate of Borrower.

14.5 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under any Financing Document (a) if such action would, in the opinion of Agent, be contrary to law or any Financing Document, (b) if such action would, in the opinion of Agent, expose Agent to any potential liability under any law, statute or regulation or (c) if Agent shall not first have received such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of all Lenders (or Required Lenders where authorized herein) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

14.6 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Agent will notify the Lenders of its receipt of any such notice. While an Event of Default has occurred and is continuing, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as Agent shall deem advisable or in the best interest of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Financing Documents, payment of taxes on behalf of Borrower or any other Credit Party, payments to landlords, warehouseman, bailees and other Persons in possession of the Collateral and other actions to protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting a Credit Party and/or the Collateral.

14.7 Credit Decision; Disclosure of Information by Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by Agent hereafter taken, including

any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Agent herein, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party which may come into the possession of any Agent-Related Person.

14.8 Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities (which shall not include legal expenses of Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; *provided, however*, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; *provided, however*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Protective Advances incurred after the closing of the transactions contemplated by this Agreement) incurred by Agent (in its capacity as Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Financing Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Agent. The term "Indemnified Liabilities" means those liabilities described in Section 13.2(a) and Section 13.2(b).

14.9 Agent in its Individual Capacity. With respect to its Credit Extensions, MidCap shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Agent, and the terms "Lender" and "Lenders" include MidCap in its individual capacity. MidCap and its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party and any of their Affiliates and any person who may do business with or own securities of any Credit Party or any of their Affiliates, all as if MidCap were not Agent and without any duty to account therefor to Lenders. MidCap and its Affiliates may accept fees and other consideration from a Credit Party for services in connection with this Agreement or otherwise without having to account for the same to the Lenders. Each Lender acknowledges the potential conflict of interest between MidCap as a Lender holding disproportionate interests in the Credit Extensions and MidCap as Agent, and expressly consents to, and waives, any claim based upon, such conflict of interest.

14.10 Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, Agent (irrespective of whether the principal of any Credit Extension, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on such Credit Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Credit Extensions and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Agent and their respective agents and counsel and all other amounts due the Lenders and Agent allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, including Protective Advances. To the extent that Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

14.11 Collateral and Guaranty Matters. The Lenders irrevocably authorize Agent, at its option and in its discretion, to release (a) any Credit Party and any Lien on any Collateral granted to or held by Agent under any Financing Document upon the date that all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) due hereunder have been fully and indefeasibly paid in full and no Applicable Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, and (b) any Lien on any Collateral that is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Financing Document. Upon request by Agent at any time, all Lenders will confirm in writing Agent's authority to release its interest in particular types or items of Collateral pursuant to this Section 14.11.

14.12 Advances; Payments; Non-Funding Lenders.

(a) Advances; Payments. If Agent receives any payment for the account of the Lenders on or prior to 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment for the account of the Lenders after 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day. To the extent that any Lender has failed to fund any Credit Extension (a "Non-Funding Lender"), Agent shall be entitled to set-off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Credit Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount (including interest accruing on such amount at the Federal Funds Rate for the first Business Day and thereafter, at the rate otherwise applicable to such Obligation) from such Lender on demand without set-off, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to a Credit Party or paid to any other person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to a Credit Party or such other person, without set-off, counterclaim or deduction of any kind.

14.13 Miscellaneous.

(a) Neither Agent nor any Lender shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other advance required hereunder. The failure of any Non-Funding Lender to make any Credit Extension or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an “Other Lender”) of its obligations to make the Credit Extension or payment required by it, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a “Lender” (or be included in the calculation of “Required Lender” hereunder) for any voting or consent rights under or with respect to any Financing Document. At Borrower’s request, Agent or a person reasonably acceptable to Agent shall have the right with Agent’s consent and in Agent’s sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent’s request, sell and assign to Agent or such person, all of the Applicable Commitments and all of the outstanding Credit Extensions of that Non-Funding Lender for an amount equal to the principal balance of the Credit Extensions held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement reasonably acceptable to Agent.

(b) Each Lender shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender’s portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements paid or made by any Credit Party. Notwithstanding the foregoing, if this Agreement requires payments of principal and interest to be made directly to the Lenders, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; *provided, however*, if it is determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Agent (for Agent to redistribute to itself and the Lenders in a manner to ensure the payment to Agent of any sums due Agent hereunder and the ratable repayment of each Lender’s portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements) such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities and whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, shall be received by a Lender in excess of its ratable share, then (i) the portion of such payment or distribution in excess of such Lender’s ratable share shall be received by such Lender in trust for application to the payments of amounts due on the other Lender’s claims, or, in the case of Collateral, shall hold such Collateral for itself and as agent and bailee for Agent and other Lenders and (ii) such Lender shall promptly advise Agent of the receipt of such payment, and, within five (5) Business Days of such receipt and, in the case of payments and distributions, such Lender shall purchase (for cash at face value) from the other Lenders (through Agent), without recourse, such participations in the Credit Extension made by the other Lenders as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them in accordance with the respective Pro Rata Shares of the Lenders; *provided, however*, that if all or any portion of such excess payment is thereafter recovered by or on behalf of a Credit Party from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest; *provided, further*, that the provisions of this Section shall not be construed to apply to (x) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or the other Financing Documents, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Applicable Commitment pursuant to Section 13.1. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. No documentation other than notices and the like shall be required to implement the terms of this Section. Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section and shall in each case notify the the Lenders following any such purchases.

15. DEFINITIONS

In addition to any terms defined elsewhere in this Agreement, or in any schedule or exhibit attached hereto, as used in this Agreement, the following terms have the following meanings:

“**Access Agreement**” means a landlord consent, bailee letter or warehouseman’s letter, in form and substance reasonably satisfactory to Agent, in favor of Agent executed by such landlord, bailee or warehouseman, as applicable, for any third party location.

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

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

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

“**Agent**” means, MidCap, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders, together with its successors and assigns.

“**Agreed Currency**” has the meaning given it in Section 10.9.

“**Agreement**” has the meaning given it in the preamble of this Agreement.

“**AML Legislation**” has the meaning giving it in Section 7.12(b).

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“**Applicable Commitment**” has the meaning given it in Section 2.2

“**Applicable Floor**” means for each Credit Facility the per annum rate of interest specified on the Credit Facility Schedule; provided, however, that for the Applicable Prime Rate, the Applicable Floor is a per annum rate that is three hundred (300) basis points above the Applicable Floor for the Applicable Libor Rate.

“**Applicable Index Rate**” means, for any Applicable Interest Period, the rate per annum determined by Agent equal to the Applicable Libor Rate; provided, however, that in the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of Agent or any Lender, make it unlawful or impractical for Agent or such Lender to fund or maintain Obligations bearing interest based upon the Applicable Libor Rate, Agent or such Lender shall give notice of such changed circumstances to Agent and Borrower and the Applicable Index Rate for Obligations outstanding or thereafter extended or made by Agent or such Lender shall thereafter be the Applicable Prime Rate until Agent or such Lender determines (as to the portion of the Credit Extensions or Obligations owed to it) that it would no longer be unlawful or impractical to fund or maintain such Obligations or Credit Extensions at the Applicable Libor Rate. In the event that Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), as of any Applicable Interest Rate Determination Date, that adequate and fair means do not exist for ascertaining the interest rate applicable to any Credit Facility on the basis provided for herein, then Agent may select a comparable replacement index and corresponding margin.

“**Applicable Interest Period**” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule; provided, however, that at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Period shall mean the period commencing as of the most recent Applicable Interest Rate Determination Date and continuing until the next Applicable Interest Rate Determination Date or such earlier date as the Applicable Prime Rate shall no longer be the Applicable Index Rate; and provided, further, that at any time the Libor Rate Index is adjusted as set forth in the definition thereof, or re-implemented following invocation of the Applicable Prime Rate as permitted herein, the Applicable Interest Period shall mean the period commencing as

of such adjustment or re-implementation and continuing until the next Applicable Interest Rate Determination Date, if any.

“Applicable Interest Rate” means a per annum rate of interest equal to the Applicable Index Rate plus the Applicable Margin.

“Applicable Interest Rate Determination Date” means the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period; provided, however, that at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Rate Determination Date means the date of any change in the Base Rate Index; and provided, further, that at any time the Libor Rate Index is adjusted as set forth in the definition thereof, the Applicable Interest Rate Determination Date shall mean the date of such adjustment or the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period, as elected by Agent.

“Applicable Libor Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Libor Rate Index.

“Applicable Margin” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule.

“Applicable Pension and Benefit Laws” has the meaning giving it in Section 5.10(b).

“Applicable Prepayment Fee”, for each Credit Facility, has the meaning given it in the Credit Facility Schedule for such Credit Facility.

“Applicable Prime Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Base Rate Index.

“Approved Fund” means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“Base Rate Index” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) as being the rate of interest announced, from time to time, within Wells Fargo Bank, N.A. (“Wells Fargo”) at its principal office in San Francisco as its “prime rate,” with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; provided, however, that Agent may, upon prior written notice to any Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate Index.

“Blocked Person” means: (a) any Person listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Books” means all of books and records of a Person, including ledgers, federal and state tax returns,

records regarding the Person's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrower" mean the entity(ies) described in the first paragraph of this Agreement as Borrower and each of their successors and permitted assigns. The term "each Borrower" shall refer to each Person comprising the Borrower if there is more than one such Person, or the sole Borrower if there is only one such Person. The term "any Borrower" shall refer to any Person comprising the Borrower if there is more than one such Person, or the sole Borrower if there is only one such Person.

"Borrowing Resolutions" means, with respect to any Person, those resolutions, in form and substance satisfactory to Agent, adopted by such Person's Board of Directors or other appropriate governing body and delivered by such Person to Agent approving the Financing Documents to which such Person is a party and the transactions contemplated thereby, as well as any other approvals as may be necessary or desired to approve the entering into the Financing Documents or the consummation of the transactions contemplated thereby or in connection therewith.

"Business Day" means any day that is not (a) a Saturday or Sunday or (b) a day on which Agent is closed.

"Canadian Income Tax Act" means the Income Tax Act (Canada), as amended from time to time.

"Canadian Credit Party" means Impopharma and any other Credit Party party hereto, from time to time, organized under the laws of Canada or any province thereof.

"Canadian DB Plan" means a Canadian Pension Plan with a "defined benefit provision" as such term is defined in the Canadian Income Tax Act.

"Canadian Pension Plan" shall mean a "registered pension plan", as that term is defined in subsection 248(1) of the Canadian Income Tax Act, sponsored, administered or contributed to, or required to be contributed to by, any Credit Party or under which any Credit Party has any liability, contingent or otherwise.

"Canadian Security Documents" means, collectively, (i) all security agreements executed by each of the Canadian Credit Parties in favor of Agent on behalf of the Lenders creating a first ranking security interest over all of the respective present and after-acquired property of the Canadian Credit Parties; and (ii) and each other agreement, document or instrument executed concurrently herewith or at any time hereafter governed by the laws of Canada or any province thereof pursuant to which a Canadian Credit Party or any other Person provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time, all in a form acceptable to Agent and may be as amended, restated, or otherwise modified from time to time.

"Change in Control" means any event, transaction, or occurrence as a result of which (a) at any time prior to the consummation of an IPO, the Preferred Investors cease to own and control all of the economic and voting rights associated with ownership of more than 35% of the outstanding securities of all classes of Impopharma on a fully diluted basis (other than by the sale of Impopharma's equity securities in or following an IPO), (b) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a Preferred Investor or a trustee or other fiduciary holding securities under an employee benefit plan of Impopharma, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of equity securities of Impopharma, representing twenty-five percent (33%) or more of the combined voting power of Impopharma's then outstanding securities (other than by the sale of Impopharma's equity securities in or following an IPO); (c) Borrower ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; (d) the occurrence of any "change in control" or any term or provision of similar effect under any Subordinated Debt Document or Borrower's Operating Documents; or (e) the chief executive officer of Borrower as of the date hereof shall cease to be involved in the day to day operations (including research and development) or management of the business of Borrower, and a successor of such officer reasonably acceptable to Agent is not appointed on terms reasonably acceptable to Agent

within 90 days of such cessation or involvement; *provided* that a successor who satisfies the requirements of Section 7.12(b) hereof and has at least the experience and credentials of the departing chief executive officer shall be deemed acceptable to Agent for purposes of this clause (e).

“**Closing Date**” has the meaning given it in the preamble of this Agreement.

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

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and the Lenders, pursuant to this Agreement and the other Financing Documents, including, without limitation, all of the property described in **Exhibit A** hereto.

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

“**Commitment Commencement Date**” has the meaning given it in the Credit Facility Schedule.

“**Commitment Termination Date**” has the meaning given it in the Credit Facility Schedule.

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

“**Compliance Certificate**” means a certificate, duly executed by an authorized officer of Borrower, appropriately completed and substantially in the form of **Exhibit B**.

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

“**Control Agreement**” means any control agreement, each of which shall be in form and substance satisfactory to Agent, entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Agent pursuant to which Agent obtains control (within the meaning of the Code) (or the ability to give instructions therefor for Deposit Accounts in Canada) for the benefit of the Lenders over such Deposit Account, Securities Account or Commodity Account.

“**Credit Extension**” means an advance or disbursement of proceeds to or for the account of Borrower in respect of a Credit Facility.

“**Credit Extension Form**” means that certain form attached hereto as **Exhibit C**, as the same may be from time to time revised by Agent.

“**Credit Facility**” means a term loan credit facility specified on the Credit Facility Schedule.

“**Credit Party**” means any Borrower, any Guarantor, and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document, and any Person whose equity interests or portion thereof have been pledged or hypothecated to Agent under any Financing Document; and “**Credit Parties**” means all such Persons, collectively.

“**DEA**” means the Drug Enforcement Administration of the United States of America, any comparable state, provincial or local Government Authority, any comparable Government Authority in any non-United States jurisdiction (including, without limitation, the Royal Canadian Mounted Police Drug Enforcement Division), and any successor agency of any of the foregoing.

“**Default**” means any fact, event or circumstance which with notice or passage of time or both, could constitute an Event of Default.

“**Default Rate**” has the meaning given it in Section 2.6(b).

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

“**Designated Funding Account**” is Borrower’s Deposit Account, account number 7319129, maintained with TD Canada Trust and over which Agent has been granted a perfected security interest for the ratable benefit of all Lenders and for which a Control Agreement has been entered into.

“**Dollars**,” “**dollars**” and “**\$**” each means lawful money of the United States.

“**Draw Period**” means, for each Credit Facility, the period commencing on the Commitment Commencement Date and ending on the Commitment Termination Date.

“**Drug Application**” means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

“**Eligible Assignee**” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, “Eligible Assignee” shall not include (i) any Credit Party or any Subsidiary of a Credit Party or (ii) unless an Event of Default has occurred and is continuing, (A) any hedge fund or private equity fund that is primarily engaged in the business of purchasing distressed debt or (B) any direct competitor of Credit Parties, in each case, as determined by Agent in its reasonable discretion. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party becoming an assignee incident to such forced divestiture.

“**Environmental Law**” means each present and future law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority and/or Required Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

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

“ERISA” means the Employee Retirement Income Security Act of 1974, and all regulations promulgated thereunder.

“ERISA Affiliate” has the meaning given it in Section 5.6.

“Event of Default” has the meaning given it in Section 10.1.

“Excluded Property” means (a) prior to the delivery of the G&W Consent is required to be delivered in accordance with the requirements of Section 6.13, the G&W Background Intellectual Property, and (b) the Villarboit Leases, in each case, only for so long as the grant of a security interest therein shall require the consent of any third party that cannot be obtained after the use of commercially reasonable efforts to obtain such consent (in each case of clauses, other than to the extent that any such requirement for consent would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law); *provided* that such security interest shall attach immediately to each portion of such lease, contract, property rights or agreement that does not require consent; and *provided, further* that “Excluded Property” shall not include any proceeds, products, substitutions, receivables or replacements of Excluded Property (unless such proceeds, products, substitutions, receivables or replacements would otherwise constitute Excluded Property).

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Credit Extension or Applicable Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Credit Extension or Applicable Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6(h)(i) or 2.6(h)(iii), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.6(h)(vi) and (vii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Exigent Circumstance” has the meaning given it in Section 13.14.

“FATCA” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC.

“FCPA” has the meaning given it in Section 5.12.

“FDA” means the Food and Drug Administration of the United States of America, any comparable state, provincial or local Government Authority, any comparable Government Authority in any non-United States jurisdiction (including, but not limited to, Health Canada), and any successor agency of any of the foregoing.

“FDCA” means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent in a commercially reasonable manner.

"Fee Letters" means, collectively, the fee letter agreements among Borrower and Agent and Borrower and each Lender.

"Financing Documents" means, collectively, this Agreement, the Perfection Certificate, the Security Documents, each Subordination Agreement and any subordination or intercreditor agreement pursuant to which any Indebtedness and/or any Liens securing such Indebtedness is subordinated to all or any portion of the Obligations, the Fee Letter(s), each note and guarantee executed by one or more Credit Parties in connection with the indebtedness governed by this Agreement, and each other present or future agreement executed by one or more Credit Parties and, or for the benefit of, the Lenders and/or Agent in connection with this Agreement, all as amended, restated, or otherwise modified from time to time.

"Foreign Lender" means a Lender that is not a U.S. Person.

"Funding Date" means any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

"G&W Background Intellectual Property" means the Impopharma Background Intellectual Property, as defined in the G&W Development Agreement.

"G&W Consent" has the meaning given it on the Post-Closing Obligations Schedule of this Agreement.

"G&W Development Agreement" means that certain Development and Commercialization Agreement, dated as of June 9, 2016, by and among G&W Laboratories and Impopharma.

"G&W Laboratories" means G&W Laboratories, Inc., a New Jersey corporation.

"GAAP" means accounting principles generally accepted in Canada as set out in the CPA Canada Handbook - Accounting at the relevant time applied on a consistent basis including, without limitation, Canadian Accounting Standards for Private Enterprises (ASPE).

"General Intangibles" means all "general intangibles", as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable Law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including, without limitation, key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

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

"Guarantor" means any present or future guarantor of the Obligations.

"Hazardous Materials" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning

of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“**Hazardous Materials Contamination**” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“**Impopharma**” has the meaning given it in the preamble of this Agreement.

“**Indebtedness**” means (a) indebtedness for borrowed money (including the Obligations) or the deferred price of, or payment for, property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (f) obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (g) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (h) all Indebtedness of others guaranteed by such Person, (i) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person, (j) obligations arising under non-compete agreements, (k) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business, and (l) Contingent Obligations.

“**Indemnified Liabilities**” has the meaning given it in Section 14.8.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under this Agreement and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**” has the meaning given it in Section 13.2.

“**Insolvency Proceeding**” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency Law, (including, for the avoidance of doubt, the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), including assignments for the benefit of creditors, compositions, examinership, winding-up, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, schedules of arrangement, examinership or other relief.

“**Intellectual Property**” means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

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

“Investment” means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, Product, business line or product line, division or other unit operation of any Person or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

“IP Security Agreement” means any security agreement executed by Borrower that grants (or is prepared as a notice filing or recording with respect to) a Lien or security interest in favor of Agent and/or the Lenders on Intellectual Property, each as amended, restated, or otherwise modified from time to time.

“IPO” means an underwritten public offering of common stock of Impopharma or any of its Subsidiaries pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act of 1933, as amended, and that results in the listing of the common stock of Impopharma or any such Subsidiary on a national securities exchange.

“IRC” means the Internal Revenue Code of 1986, as amended, and any successor provisions.

“IRS” means the United States Internal Revenue Service.

“Joinder Requirements” has the meaning set forth in Section 6.8.

“Laws” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, guidance, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance.

“Lender” means any one of the Lenders.

“Lenders” means the Persons identified on the Credit Facility Schedule as amended from time to time to reflect assignments made in accordance with this Agreement.

“Libor Rate Index” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by dividing (a) the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Applicable Interest Period or, if such day is not a Business Day, on the preceding Business Day) in the amount of One Million Dollars (\$1,000,000) are offered to major banks in the London interbank market on or about 11:00 a.m. (New York time) on the Applicable Interest Rate Determination Date, for a period of thirty (30) days, which determination shall be conclusive in the absence of manifest error, by (b) 100% minus the Reserve Percentage; provided, however, that Agent may, upon prior written notice to any Borrower, choose a reasonably comparable index or source to use as the basis for the Libor Rate Index. The Libor Rate Index may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then Applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the Libor Rate Index; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall

Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such Libor Rate Index and the method for determining the amount of such adjustment.

"License Agreements" means all in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public).

"Lien" means a claim, mortgage, deed of trust, lien, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of Law or otherwise against any property.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"Material Adverse Change" means (a) a material impairment in the perfection or priority of the Agent's Lien (or any Lender's Lien therein to the extent provided for in the Financing Documents) in the Collateral; (b) a material impairment in the value of the Collateral; (c) a material adverse change in the business, operations, or financial condition of the Credit Parties, taken as a whole; or (d) a material impairment of the prospect of repayment of any portion of the Obligations when due.

"Material Agreement" means (a) the agreements listed in the **Disclosure Schedule**, (b) each Material License Agreement, and (d) each agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which would reasonably be expected to result in a Material Adverse Change.

"Material Indebtedness" has the meaning given it in Section 10.1.

"Material Intangible Assets" means (i) all of Borrower's Intellectual Property and (ii) each License Agreement that, in the case of each of clauses (i) and (ii), is material to the condition (financial or other), business or operations of Borrower.

"Material License Agreement" means a License Agreement which constitutes a Material Intangible Asset.

"Maturity Date" means January 1, 2020.

"Maximum Lawful Rate" has the meaning given it in Section 2.6(g).

"MidCap" has the meaning given it in the preamble of this Agreement.

"Multiemployer Plan" means any employee benefit plan of the type described in and subject to Section 4001(a)(3) or ERISA, to which any Credit Party or any ERISA Affiliate has at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability, contingent or otherwise.

"Obligations" means all of Borrower's obligations to pay when due any debts, principal, interest, Protective Advances, fees, indemnities and other amounts Borrower owes the Agent or the Lenders now or later, under this Agreement or the other Financing Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Agent, and the payment and performance of each other Credit Party's covenants and obligations

under the Financing Documents. “Obligations” does not include obligations under any Warrants or any other warrants issued to Agent or a Lender.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” means, for any Person, such Person’s formation documents, as certified with the Secretary of State (or other appropriate Governmental Authority) of such Person’s jurisdiction of formation on a date that is no earlier than thirty (30) days prior to the Closing Date, and (a) if such Person is a corporation, its bylaws and articles of incorporation, articles of association, articles of amalgamation or articles of amendment (as applicable) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices or then current business practices set forth in the most recent operating plan of Borrower to the extent approved by the Borrower’s board of directors, which shall in any event be at arms-length.

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

“**Other Currency**” has the meaning given it in Section 10.9.

“**Other Tax Certification**” means such certification or evidence, in each case in form and substance satisfactory to Agent, that any Lender or prospective Lender is exempt from, or eligible for a reduction in, U.S. federal withholding tax or backup withholding tax, including evidence supporting the basis for such exemption or reduction.

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

“**Participant Register**” has the meaning given it in Section 13.1(c).

“**Payment Date**” means the first calendar day of each calendar month.

“**PBGC**” means the Pension Benefit Guaranty Corporation, or any successor entity thereto.

“**Pension Plan**” means any employee benefit pension plan that is subject to the minimum funding standards under Section 412 of the Code or is covered by Title IV of ERISA (including a Multiemployer Plan) that any Credit Party or any ERISA Affiliate has, at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability (contingent or otherwise).

“**Perfection Certificate**” means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

“**Permitted Contest**” means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly diligently instituted and conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers’ and its Subsidiaries’ title to, and its right to use, the Collateral is not adversely affected thereby and Agent’s Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower’s or its Subsidiary’s intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement, and any material development in, the proceedings; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

“**Permitted Contingent Obligations**” means (a) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (b) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed Twenty-Five Thousand Dollars (\$25,000) in the aggregate at any time outstanding; (c) Contingent Obligations arising under indemnity agreements with title insurers; (d) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Article 7; (e) Contingent Obligations arising under the Financing Documents; (f) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any future, forward or swap contract, provided, however, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (g) Contingent Obligations existing or arising in connection with any security deposit or letter of credit obtained for the sole purpose of securing a lease of real property, or in connection with ancillary bank services such as a corporate credit card facility, provided that the aggregate face amount of all such security deposits, letters of credit and ancillary bank services does not at any time exceed One Hundred Thousand Dollars (\$100,000); and (h) other Contingent Obligations not permitted by clauses (a) through (g) above, not to exceed Twenty-Five Thousand Dollars (\$25,000) in the aggregate at any time outstanding.

“**Permitted Indebtedness**” means: (a) Borrower’s Indebtedness to the Lenders and Agent under this Agreement and the other Financing Documents; (b) Indebtedness existing on the Closing Date and described on the **Disclosure Schedule**; (c) Indebtedness secured by Permitted Liens; (d) Subordinated Debt; (e) unsecured Indebtedness to trade creditors incurred in the Ordinary Course of Business; (f) Permitted Contingent Obligations; (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness set forth in (b) and (c) above, *provided, however*, that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon the obligors thereunder; and (h) Indebtedness consisting of intercompany loans and advances made by any Credit Party to any other Credit Party, provided that (1) the obligations of the Credit Parties under such intercompany loan shall be subordinated at all times to the Obligations of the Credit Parties hereunder or under the other Financing Documents in a manner satisfactory to Agent and (2) to the extent that such Indebtedness is evidenced by a promissory note or other written instrument, Borrower shall pledge and deliver to Agent, for the benefit of itself and the Lenders, the original promissory note or instrument, as applicable, along with an endorsement in blank in form and substance satisfactory to Agent

“**Permitted Investments**” means: (a) Investments existing on the Closing Date and described on the **Disclosure Schedule**; (b) Investments consisting of cash equivalents; (c) any Investments in liquid assets permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Agent (provided, that, under no circumstances shall Borrower be permitted to invest in or hold Margin Stock); (d) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of any Credit Party; (e) Investments consisting of deposit accounts or securities accounts in which the Agent has a first priority perfected security interest except as otherwise provided by Section 6.6; (f) Investments in Subsidiaries solely to the extent

permitted pursuant to Section 6.8; (g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors; (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; and (i) Investments consisting of intercompany Indebtedness in accordance with and to the extent permitted by clause (h) of the definition of "Permitted Indebtedness".

"Permitted License" means any non-exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"Permitted Liens" means: (a) Liens existing on the Closing Date and shown on the **Disclosure Schedule** or arising under this Agreement and the other Financing Documents; (b) purchase money Liens or capital leases securing no more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate amount outstanding (i) on Equipment acquired or held by a Credit Party incurred for financing the acquisition of the Equipment, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment; (c) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which adequate reserves are maintained on the Books of the Credit Party against whose asset such Lien exists, *provided* that no notice of any such Lien has been filed or recorded under any applicable law, including, without limitation, the IRC and the treasury regulations adopted thereunder; (d) statutory Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons imposed without action of such parties in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (e) leases or subleases of real property granted in the Ordinary Course of Business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the Ordinary Course of Business, if the leases, subleases, licenses and sublicenses do not prohibit granting Agent a security interest; (f) banker's liens, rights of set-off and Liens in favor of financial institutions incurred made in the Ordinary Course of Business arising in connection with a Credit Party's Collateral Accounts provided that such Collateral Accounts are subject to a Control Agreement to the extent required hereunder; (g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the Ordinary Course of Business (other than Liens imposed by ERISA); (h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default; (i) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a Material Adverse Change (j) the Liens of TD Bank on the TD Cash Collateral Accounts and the cash permitted to be on deposit therein; and (k) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) and (b) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

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

"Personal Property Security Act" or **"PPSA"** means the *Personal Property Security Act* (Ontario).

"Pledge Agreement" means that certain Pledge Agreement executed by the Borrower in favor of Agent, for the benefit of Lenders, on the Closing Date covering all the equity interests owned by Impopharma, as amended, restated, or otherwise modified from time to time.

"Preferred Investor" means any owner of more than 10% of the Preferred Stock of Impopharma as of the Closing Date.

"Pro Rata Share" means, as determined by Agent, with respect to each Credit Facility and Lender holding

an Applicable Commitment or Credit Extensions in respect of such Credit Facility, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by *dividing* (a) in the case of fully-funded Credit Facilities, the amount of Credit Extensions held by such Lender in such Credit Facility *by* the aggregate amount of all outstanding Credit Extensions for such Credit Facility, and (b) in the case of Credit Facilities that are not fully-funded, the amount of Credit Extensions and unfunded Applicable Commitments held by such Lender in such Credit Facility *by* the aggregate amount of all outstanding Credit Extensions and unfunded Applicable Commitments for such Credit Facility.

“**Process Agent**” has the meaning given it in Section 13.19.

“**Products**” means any products manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, in each case for the benefit of Borrower or any of its Subsidiaries and not as a service provider for the benefit of a third party, including without limitation, those products set forth on the **Products Schedule** (as updated from time to time in accordance with Section 6.16); *provided*, that, for the avoidance of doubt, any new Product not disclosed on the **Products Schedule** shall still constitute a “Product” as herein defined.

“**Protective Advances**” means all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) of Agent and the Lenders for preparing, amending, negotiating, administering, defending and enforcing the Financing Documents and the Warrants (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Agent or the Lenders in connection with the Financing Documents and the Warrants.

“**Recipient**” means the Agent and any Lender, as applicable.

“**Register**” has the meaning given it in Section 13.1(d).

“**Registered Intellectual Property**” means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

“**Registered Organization**” means any “registered organization” as defined in the Code, with such additions to such term as may hereafter be made.

“**Regulatory Reporting Event**” has the meaning given it in Section 6.16(a).

“**Regulatory Required Permit**” means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State governments for the conduct of Borrower’s or any Subsidiary’s business.

“**Required Lenders**” means, unless all of the Lenders and Agent agree otherwise in writing, Lenders having (a) more than sixty percent (60%) of the Applicable Commitments of all Lenders, or (b) if such Applicable Commitments have expired or been terminated, more than sixty percent (60%) of the aggregate outstanding principal amount of the Credit Extensions.

“**Required Permit**” means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, provider numbers, marketing authorizations, other authorizations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, “**Required Permits**” includes any Regulatory Required Permit.

“Reserve Percentage” means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“Responsible Officer” means any of the President, Chief Executive Officer or Chief Financial Officer of Borrower.

“Secretary’s Certificate” means, with respect to any Person, a certificate, in form and substance satisfactory to Agent, executed by such Person’s secretary (or another officer, if no secretary is appointed) on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Financing Documents to which it is a party, (b) that attached to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Financing Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Financing Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), (d) that attached to such certificate are true, correct, and complete copies of the Operating Documents of such Person (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of such Person) and good standing certificates of such Person certified by the Secretary of State of the state(s) of organization of such Person (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of such Person) as of a date no earlier than thirty (30) days prior to the Closing Date, (e) that attached to such certificate is true, correct, and complete copy of the any Registration Rights Agreement/Investors’ Rights Agreement, voting agreements or other agreements among shareholders and any amendments to the foregoing, in each case if applicable; and (f) that Agent and the Lenders may conclusively rely on such certificate unless and until such Person shall have delivered to Agent a further certificate canceling or amending such prior certificate.

“Secured Promissory Note” has the meaning given it in Section 2.7.

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

“Security Documents” means, collectively, the Pledge Agreement, each IP Security Agreement, each Account Control Agreement and the Canadian Security Documents, and each other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“Spinnaker Way Location” means Borrower’s facilities located at 255 Spinnaker Way, Unit 6, Concord, ON L4K 4J1 Canada.

“Stated Rate” has the meaning given it in Section 2.6(g).

“Subordinated Debt” means indebtedness incurred by Borrower which shall be (a) in an amount satisfactory to Agent, (b) made pursuant to documents in form and substance satisfactory to Agent (the **“Subordinated Debt Documents”**), and (c) subordinated to all of Borrower’s now or hereafter indebtedness to Agent and the Lenders pursuant to a Subordination Agreement.

“Subordination Agreement” means a subordination, intercreditor, or other similar agreement in form and substance, and on terms, approved by Agent in writing.

“Subsidiary” means, with respect to any Person, any Person of which more than fifty percent (50.0%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled,

directly or indirectly, by such Person.

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

“**TD Bank**” means The Toronto-Dominion Bank, a chartered bank subject to the provisions of the *Bank Act* (Canada).

“**TD Cash Collateral Accounts**” means, collectively, those certain restricted Deposit Accounts at TD Bank established for the sole purpose of providing cash collateral for (i) the obligations owing under those certain TD VISA Business card(s) made available pursuant to the letter agreement dated November 14, 2014, as amended July 4, 2016, between TD Bank and the Borrower (the “**TD Credit Agreement**”), the balance of which shall not, at any time, exceed 88,000 Canadian dollars, and (ii) obligations owing under those certain treasury products made available pursuant to the TD Credit Agreement, the balance in which shall not, at any time, exceed \$100,000.

“**Transfer**” has the meaning given it in Section 7.1.

“**U.S. Credit Party**” means any Credit Party hereto, from time to time, organized under the laws of the United States or any state thereof.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Villarboit Leases**” means (a) that certain Lease, dated as of September 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 3, Concord, ON., L4K 4J1, (b) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 4, Concord, ON., L4K 4J, (c) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 5, Concord, ON., L4K 4J, (d) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 6, Concord, ON., L4K 4J1, and (e) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 7, Concord, ON., L4K 4J1.

“**Warrants**” means each warrant to purchase equity interests of Impopharma Inc., a corporation validly existing under the *Business Corporations Act* (Ontario), dated as of the Closing Date and as the same may be amended, restated, supplemented or modified from time to time in accordance with the terms thereof.

“**Withholding Agent**” means Borrower and Agent.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending that this instrument constitute an instrument executed and delivered under seal, the parties hereto have caused this Agreement to be executed as of the Closing Date.

BORROWER:

IMPOPHARMA INC.

By: *Vien Brewster* (SEAL)
Name: Vien Brewster
Title: Vice President, Finance and Secretary

IMPOPHARMA US, INC.

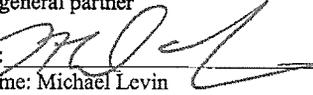
By: *Vien Brewster* (SEAL)
Name: Vien Brewster
Title: Vice President, Finance

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

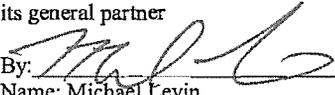
By:  (SEAL)
Name: Michael Levin
Title: Authorized Signatory

LENDERS:

MIDCAP FUNDING XIII TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:  (SEAL)
Name: Michael Levin
Title: Authorized Signatory

EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Collateral
Exhibit B	Form of Compliance Certificate
Exhibit C	Credit Extension Form

SCHEDULES

Credit Facility Schedule
Amortization Schedule
Post-Closing Obligations Schedule
Closing Deliveries Schedule
Disclosure Schedule
Intangible Assets Schedule
Products Schedule
Required Permits Schedule

EXHIBIT A
COLLATERAL

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

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

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

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

Notwithstanding the foregoing, the Collateral shall not include the Excluded Property.

EXHIBIT B

COMPLIANCE CERTIFICATE

TO: MidCap Financial Trust, as Agent
FROM: _____
DATE: _____, 201__

The undersigned authorized officer of Impopharma Inc., a corporation validly existing under the *Business Corporations Act* (Ontario) (“**Borrower**”) certifies that under the terms and conditions of the Credit and Security Agreement between Borrower, the other Credit Parties party thereto, Agent and the Lenders (as amended, restated, supplemented, replaced or otherwise modified from time to time, the “**Agreement**”):

(1) Borrower is in complete compliance with all required covenants for the month ending _____, 201__, except as noted below;

(2) there are no Events of Default;

(3) all representations and warranties in Article 5 of the Agreement are true and correct in all material respects on this date except as noted below; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further*, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(4) each of Borrower and the other Credit Parties has timely filed all required tax returns and reports, and has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed except as otherwise permitted pursuant to the terms of the Agreement;

(5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent; and

(6) attached hereto is an updated [Disclosure Schedule][Required Permits Schedule][Products Schedule][Intangible Assets Schedule][INSERT AS APPROPRIATE] as required to be updated pursuant to the terms of the Credit and Security Agreement.

Attached are the required documents supporting the certifications set forth in this Compliance Certificate. The undersigned certifies, in his/her capacity as an officer of Borrower, that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges, in his/her capacity as an officer of Borrower, that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>	
Monthly Cash Reconciliation	Monthly within 30 days	N/A	
Quarterly Financial Statements	Quarterly within 30 days	Yes	No
Audited Financial Statements	Annually within 120 days after FYE	Yes	No
Board Approved Projections	Annually within 30 days after FYE	Yes	No

Compliance Certificate	Monthly within 30 days	Yes	No
------------------------	------------------------	-----	----

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

IMPOPHARMA, INC.

By: _____
 Name: _____
 Title: _____

AGENT USE ONLY

Received by: _____
 AUTHORIZED SIGNER
 Date: _____

Verified: _____
 AUTHORIZED SIGNER
 Date: _____

Compliance Status: Yes No

EXHIBIT C

CREDIT EXTENSION FORM

DEADLINE IS NOON NEW YORK TIME

Date: _____, 201__

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____ To Account # _____
(Loan Account #) (Deposit Account #)

Amount of Advance \$ _____

Requested Date of Advance (subject to requirements of Credit and Security Agreement): _____

All Borrower's representations and warranties in Article 5 of the Credit and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further*, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: _____ Phone Number: _____
Print Name/Title: _____

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Beneficiary Name: _____ Amount of Wire: \$ _____

Beneficiary Lender: _____ Account Number: _____

City and State: _____

Beneficiary Lender Transit (ABA) #: _____ Beneficiary Lender Code (Swift, Sort, Chip, etc.): _____

(For International Wire Only)

Intermediary Lender: _____ Transit (ABA) #: _____

For Further Credit to: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me.

Authorized Signature: _____ 2nd Signature (if required): _____
Print Name/Title: _____ Print Name/Title: _____
Telephone #: _____ Telephone #: _____

CREDIT FACILITY SCHEDULE

Credit Facility and Type: Term

Lenders for and their respective Applicable Commitments to this Credit Facility:

Lender	Applicable Commitment
MidCap Funding XIII Trust	Seven Million Dollars (\$7,000,000.00)

The following defined terms apply to this Credit Facility:

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one half of one percent (0.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to seven and three quarters percent (7.75%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an Accrual Date on or after the Closing Date through and including the date which is twelve (12) months after the Closing Date, three and one half percent (3.50%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an Accrual Date after the date which is twelve (12) months after the Closing Date through and including the date twenty-four (24) months after the Closing Date, two and three quarter percent (2.75%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an Accrual Date after the date which is twenty-four (24) months after the Closing Date through and including the date immediately preceding the Maturity Date, one percent (1.00%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Closed Period: Not applicable.

Commitment Commencement Date: Closing Date.

Commitment Termination Date: the close of the Business Day following the Closing Date.

Minimum Credit Extension Amount: \$7,000,000.00

Permitted Purpose: Not applicable.

AMORTIZATION SCHEDULE

Commencing on the first day of the full calendar month following the twelve (12) month anniversary of the Closing Date (the “**Initial Amortization Start Date**”) and continuing on the first day of each calendar month thereafter, Borrower shall pay to Agent as a principal payment on the Credit Extensions in an amount equal to the total principal amount of the Credit Extensions made to Borrower *divided by* thirty (30), for a thirty (30) month straight-line amortization of equal monthly principal payments; *provided, however*, Borrower may, on any Business Day during the period (a) beginning on the date on which Borrower delivers to Agent evidence reasonably satisfactory to Agent that Borrower has demonstrated in-vitro bioequivalence of its Albuterol sulphate product to Proventil HFA Inhalation Aerosol that is sufficient to file as part of an ANDA and (b) ending on the date that is fifteen days prior to the Initial Amortization Start Date, request in writing that Agent and the Lenders extend the Initial Amortization Start Date (an “**IO Extension Request**”) by three (3) months. If, as of the date of the IO Extension Request and the Initial Amortization Start Date, no Event of Default has occurred and is continuing, then the Initial Amortization Start Date shall be extended by three (3) months such that principal payments shall commence on the first day of the full calendar month following the fifteen (15) month anniversary of the Closing Date and shall be in an amount equal to the then aggregate outstanding principal balance of the Credit Extensions made to Borrower *divided by* twenty-seven (27), for a twenty-seven (27) month straight-line amortization of equal monthly principal payments.

POST-CLOSING OBLIGATIONS SCHEDULE

Borrower shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within thirty (30) days after the Closing Date (or such later date as Agent may agree in its sole discretion), use commercially reasonable efforts to obtain and deliver to Agent the written consent of G&W Laboratories to permit the granting of a security interest in the G&W Background Intellectual Property by Impopharma to the Agent, for the benefit of the Lenders, which such written consent shall be in form and substance reasonably satisfactory to Agent (the “**G&W Consent**”).

Borrower’s failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower’s failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate and automatic Event of Default.

CLOSING DELIVERIES SCHEDULE

1. duly executed signatures to the Financing Documents to which Borrower is a party.
2. duly executed signatures to the Control Agreements with TD Bank, National Association;
3. duly executed original Secured Promissory Notes in favor of each Lender with a face amount equal to such Lender's Applicable Commitment under each Credit Facility, if required by any Lender;
4. the Operating Documents of Borrower and good standing certificates of Borrower (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of Borrower) certified by the Secretary of State or similar entity of the jurisdiction of organization of Borrower as of a date no earlier than thirty (30) days prior to the Closing Date;
5. good standing certificates (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of Borrower) dated as of a date no earlier than thirty (30) days prior to the Closing Date to the effect that Borrower is qualified to transact business in all states in which the nature of Borrower's business so requires;
6. certified copies, dated as of a recent date, of Lien, bankruptcy, insolvency, judgment, copyright, patent and trademark searches (including in respect of each Canadian Credit Party, searches of the Personal Property Security Act) in each jurisdiction reasonably requested by the Agent with respect to the Credit Parties, as Agent shall request, accompanied by written evidence (including any UCC and/or PPSA termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
7. the Perfection Certificate executed by Borrower;
8. the US Process Agent letter demonstrating compliance with Section 13.19;
9. a legal opinion of Borrower's Canadian and United States counsel dated as of the Closing Date together with the duly executed signatures thereto;
10. evidence satisfactory to Agent that the insurance policies required by Article 6 are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Agent, for the ratable benefit of the Lenders;
11. payment of the fees and expenses of Agent and the Lenders then accrued, including pursuant to the Fee Letters;
12. a duly executed Secretary's Certificate dated as of the Closing Date which includes executed copies of the Borrowing Resolutions;
13. timely receipt by the Agent of an executed disbursement letter;
14. a certificate executed by a Responsible Officer of Borrower, in form and substance satisfactory to Agent, which shall certify as to certain conditions to the funding of the Credit Extensions on the Closing Date;
15. timely receipt by the Lenders of executed Warrants to purchase shares of Borrower's fully registered common stock in an amount equal to three percent (3%) of the aggregate Applicable Commitments of such lender hereunder, divided by the exercise price;
16. (i) all share certificates, transfers and stock transfer forms or equivalent duly executed by Borrower in blank in relation to the assets subject to or expressed to be subject to the Security Documents and other documents of title to be provided under the Security Documents and (ii) all other possessory collateral required to be delivered to Agent with corresponding endorsements pursuant to Section 4.2(b);
17. copies of any Registration Rights Agreement/Investors' Rights Agreement and any amendments thereto; and
18. timely receipt by the Agent of evidence that Borrower has obtained equity financing from existing and/or new investors in an amount not less than \$5,000,000.00, such evidence to be in form and substance satisfactory to Agent.

DISCLOSURE SCHEDULE

Scheduled Collateral Accounts

Bank Name	Account Type	Account Number
The Toronto-Dominion Bank	CAD Money Market	15522-004-5229745
	US Money Market	15522-004-7319129
	CAD Operating Account	17282-004-5227261
	USD Money Market	15522-004-7307732
TD Bank, National Association	USD Operating Account (payroll only)	031201360-4282419774

Scheduled Permitted Liens

Debtor	Secured Party	Collateral	State and Jurisdiction	Filing Date and Number (include original file date and continuations, amendments, etc.)
Impopharma Inc.	Gold Card Leasing O/B Goldcard Inc.	<u>Collateral Classification:</u> Equipment, Other <u>Collateral Description:</u> (4) Alliance HPLC systems complete with all accessories and attachments including XC separations modules, bottle trays, U/V visible detectors, and SQT alliance familu UVS, and software. (as per detailed description on	Province of Ontario	<u>Filing date:</u> September 3, 2015 <u>File number:</u> 709621668 <u>Registration number:</u> 20150903 1053 1873 1216

		invoice #257045466 dated August 14, 2015)		
Impopharma Inc.	Goldlease Limited	<u>Collateral Classification:</u> Equipment, Other <u>Collateral Description:</u> One MDI AS actuation station, one patient actuator adaptor, calibration kit, users guide, MDI AS application software as well as installation and shipping and handling, as well as all accessories, all as per Innovasystems, Inc. Quote number 001839-A.	Province of Ontario	<u>Filing date:</u> May 4, 2012 <u>File number:</u> 678151035 <u>Registration number:</u> 20120504 1911 1793 4498
Impopharma Inc. Dynagon Inc. (added on April 26, 2012)	Goldlease Limited	<u>Collateral Classification:</u> Inventory, Equipment, Other <u>Collateral Description:</u> Used aerosol pilot production plant complete with all attachments and accessories as well as a mini-stage equipment (crimper, filler, spray tester, pump, pipework, table. Mixing Tank, GIUSTI 45L mixing tank, spray tester-	Province of Ontario	<u>Filing date:</u> January 13, 2012 <u>File number:</u> 675633996 <u>Registration number:</u> 20120113 1744 1793 9397 <u>Amendment:</u> Financing change statement registered on April 26, 2012 under number 20120426 1403 1462 2661 to add Dynagon Inc. as an additional debtor.

		sessions of York ID#11-PG0021, crimper, two filler (HFA), filler (active drug), can cleaner, cascade impactor, sartorius balance- PH meter-oak ton ph2100 series, labconco flaskscrubber, heavy duty floor weight scale, barnstead water system ro unit model #D9011-tank #D9021-DI Units D11931 and plymovent miniman-100 extraction arm.		
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Scheduled Permitted Indebtedness

Debtor	Creditor	Amount of Indebtedness outstanding as of July __, 2016	Maturity Date
Nil.			

Scheduled Permitted Investments

Debtor	Type of Investment	Date	Amount Outstanding as of July __, 2016
Nil.			

Material Agreements

1. Development Agreement dated as of September 25, 2012 entered into between Wilshire Pharmaceuticals, Inc. and Impopharma Inc.

2. Master Services Agreement dated May 26, 2015 entered into between Impopharma Inc. and Ei LLC.
3. Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
4. Lease Agreement dated May 3, 2012 entered into between Goldlease Limited and Impopharma Inc.
5. Lease Agreement dated June 23, 2015 entered into between Gold Card Leasing and Impopharma Inc.

Scheduled Litigation

Nil.

Scheduled ownership interest in any Chattel Paper, letter of credit rights, commercial tort claims, Instruments, Documents or investment property

Nil.

INTANGIBLE ASSETS SCHEDULE

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS)				
Borrower that is Owner of IP	Name / Identifier of IP	Type of IP (e.g., patent, TM, ©, mask work)	Registration/Publication or Application Number	Filing Date/Expiration Date
Nil.				

INTANGIBLE ASSETS SCHEDULE (CONTINUED)

MATERIAL LICENSE AGREEMENTS

INBOUND LICENSE # 1	
Name and Date of License Agreement:	Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
Name and address of Licensor:	G&W Laboratories, Inc. 301 Helen Street South Plainfield, NJ 07080-3895

INBOUND LICENSE # 2	
Name and Date of License Agreement:	Master Services Agreement dated May 26, 2015 entered into between Impopharma Inc., and Ei LLC.
Name and address of Licensee:	Ei LLC 2685 N. Cannon Blvd Kannapolis, NC 28083

OUTBOUND LICENSE # 1	
Name and Date of License Agreement:	Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
Name and address of Licensee:	G&W Laboratories, Inc. 301 Helen Street South Plainfield, NJ 07080-3895

OUTBOUND LICENSE # 2	
Name and Date of License Agreement:	Master Services Agreement dated May 26, 2015 entered into by and between Impopharma Inc., and Ei LLC.
Name and address of Licensee:	Ei LLC 2685 N. Cannon Blvd Kannapolis, NC 28083

PRODUCTS SCHEDULE

1. Albuterol Sulfate Inhalation HFA Aerosol 120 mcg
2. Beclomethasone Dipropionate HFA Aerosol 40 and 80 mcg
3. Sumatriptan Nasal Spray, 5 and 20 mg
4. Clobetasol Propionate Topical Solution, USP 0.05% (Spray)
5. Ipratropium Bromide HFA Inhalation Aerosol 12.9 g/200 actuations
6. Dihydroergotamine Mesylate Nasal Spray 4 mg/mL

REQUIRED PERMITS SCHEDULE

1. FDA Establishment Number 3003285511.
2. Health Canada Drug Establishment Licence (DEL) #100709.
3. FDA Abbreviated New Drug Application 208967.

SCHEDULE B
BLOCKED ACCOUNTS AGREEMENT

TO: THE TORONTO-DOMINION BANK (the "Bank")

RE: Blocked Accounts Agreement, dated July ⁸, 2016 among Impopharma Inc. (the "Company"), MidCap Financial Trust (the "Secured Party") and the Bank (a copy of which is attached hereto, the "Blocked Accounts Agreement").

DIRECTION

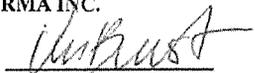
You are hereby irrevocably authorized and directed to pay any and all proceeds on deposit in the Blocked Accounts (as defined the Blocked Accounts Agreement) to the Secured Party or as the Secured Party may further direct.

And this shall be your good and sufficient authority for so doing.

Dated the 25th day of July, 2018.

IMPOPHARMA INC.

Per:

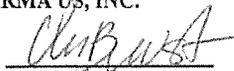


Name: Vien Brewster
Title: CFO

I have authority to bind the Corporation

IMPOPHARMA US, INC.

Per:



Name: Vien Brewster
Title: officer

I have authority to bind the Corporation

BLOCKED ACCOUNTS AGREEMENT

THIS AGREEMENT dated July 8, 2016.

AMONG :

IMPOPHARMA INC.
as the "Company"

- and -

MIDCAP FINANCIAL TRUST (as agent for itself and the
other Lenders under the Credit Agreement (as herein
defined))
as the "Secured Party"

- and -

THE TORONTO-DOMINION BANK
as the "Bank"

RECITALS

- A. The Company and the Secured Party are party to a credit and security agreement dated as of July 8, 2016 by and among, *inter alios*, the Company and Impopharma US, Inc., as borrowers, the lenders from time to time party thereto, as lenders (collectively, the "Lenders"), and the Secured Party, as administrative agent for the Lenders (as amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement").
- B. As required by the Credit Agreement, the Company has granted security to the Secured Party and, pursuant to the Credit Agreement, the Secured Party requires the implementation of the cash management arrangements provided for in this Agreement.

FOR VALUE RECEIVED, the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

Section 1.1 Definitions

In this Agreement:

- (a) "Activation Date" means the later of (i) date which is three (3) Business Days after the date upon which the Secured Party delivers an Activation Notice to the Bank and (ii) the date upon which the Secured Party has satisfied the Bank's anti-money laundering and know your customer requirements.

- (b) “**Activation Notice**” means a written notice from the Secured Party to the Bank in the form of Schedule A hereto.
- (c) “**Blocked Accounts**” has the meaning set forth in Section 2.1(b).
- (d) “**Branch of Account**” means the branch of the Bank located at:

2038 Kipling Ave., Rexdale, ON M9W 4K
- (e) “**Business Day**” means any day on which the Branch of Account is open for business to the public.
- (f) “**Chargebacks**” has the meaning set forth in Section 5.3.
- (g) “**Cheques**” means all cash, cheques, money orders, wire transfers, notes, drafts and other orders for payment of money or other remittances payable to the Company.
- (h) “**Claim**” has the meaning set forth in Section 6.1.
- (i) “**CPA Rules**” means the rules established from time to time by the Canadian Payments Association to govern the clearing and settlement of payment items within the national clearing and settlement system.
- (j) “**fees and expenses**” has the meaning set forth in Section 5.2.
- (k) “**Receivables**” means all of the Company's present and future accounts, accounts receivable, debts and book debts of any nature or type.
- (l) “**Rescission Notice**” has the meaning set forth in Section 3.3.

Section 1.2 Interpretation

In interpreting this Agreement, the headings and the division of the Articles and Sections are inserted for convenience only and are to be ignored in construing this Agreement; all references to Articles, Sections, subsections, clauses and Schedules are to Articles, Sections, subsections, clauses and Schedules of and to this Agreement; the words “hereto,” “herein,” “hereof,” “hereunder,” “this Agreement” and similar expressions mean this Agreement as a whole and not any particular Article, Section, subsection or Schedule unless expressly so stated; grammatical variations of any term defined herein shall have similar meanings and words importing the singular shall include the plural and vice versa; reference herein to any agreement or other document shall be deemed to include reference to such agreement or other document as the same may from time to time be amended, supplemented, restated or otherwise modified.

**ARTICLE 2
ACKNOWLEDGEMENT OF SECURITY**

Section 2.1 Acknowledgement of Security

The Company acknowledges that it has granted to, and has created in favour of, the Secured Party a first-priority, perfected security interest in:

- (a) its interest in all Cheques and other remittances received by the Company; and
- (b) the following depository accounts in the name of the Company:

<u>Account Name</u>	<u>Account Number / Branch</u>
CAD Money Market	15522-004-5229745
US Money Market	15522-004-7319129
CAD Operating Account	17282-004-5227261
USD Money Market	15522-004-7307732

(the “**Blocked Accounts**”), including all sums now on deposit therein or payable thereto and any interest accrued or payable on the credit balances therein.

The Bank acknowledges the Secured Party’s lien on and security interest in the Blocked Accounts.

**ARTICLE 3
BLOCKED ACCOUNTS OPERATION**

Section 3.1 Instructions

Prior to the Activation Date, the Company shall be authorized to operate all accounts including the Blocked Accounts alone, as between the Company and Secured Party, in the usual course and without prior notice to or consent of the Secured Party. Commencing on the Activation Date, the Blocked Accounts shall be subject to instructions only from the Secured Party, which alone, as between the Company and the Secured Party, shall have all authority and right in connection with the Blocked Accounts. The Bank shall have the right to rely and act upon the instructions of any person who the Bank believes is a person that the Company (prior to the Activation Date) or the Secured Party (on and after the Activation Date) has identified in writing from time to time to the Bank as being a person authorized to give instructions regarding the Blocked Accounts to the Bank.

Section 3.2 Delivery of Activation Notice

The Secured Party agrees with the Company that it shall deliver an Activation Notice to the Bank only following the occurrence of an Event of Default (as defined in the Credit Agreement) which is continuing. Any Activation Notice delivered by the Secured Party to the Bank shall be the

Bank's sole and sufficient authority to act on such Activation Notice, and the Bank shall have no obligation or duty to the Company or any other person to verify or confirm that the Secured Party is entitled to deliver an Activation Notice before so acting.

Section 3.3 Rescission of Activation Notice

Notwithstanding any other provision of this Agreement, the Secured Party may, at any time after the delivery of an Activation Notice, deliver a notice to the Bank rescinding such Activation Notice (a "**Rescission Notice**") and, three (3) Business Days following receipt of a Rescission Notice, this Agreement shall continue as though no Activation Notice had been delivered, provided that nothing in this Section 3.3 shall preclude the Secured Party from delivering a subsequent Activation Notice. For certainty, the Bank shall, within three (3) Business Days of its receipt of a Rescission Notice, terminate the Secured Party's access to its Web Business Banking Wire Payments Service and the corresponding ability to initiate wire payments from the Blocked Accounts.

Section 3.4 Web Business Banking

From and after the Activation Date, the Company hereby irrevocably and unconditionally covenants and agrees to provide the Secured Party with access to its Web Business Banking Wire Payments Service with the Bank and directs the Bank to provide the Secured Party with such access and hereby further consents to the Secured Party initiating wire payments from the Blocked Accounts to the Secured Party's account(s) and the Bank is hereby authorized and directed to assist the Secured Party in connection with same. From and after the Activation Date, the Company hereby further authorizes and directs the Bank to provide the Secured Party with electronic access to balance and transaction reporting of the Blocked Accounts and any other information concerning the Blocked Accounts the Secured Party may require, including the ability to print any such information. On the Activation Date, the Bank hereby further agrees to change the Company's access to the Blocked Accounts to "read-only" and the Company hereby consents to same. The Bank shall have no liability to the Company for any claims that may arise as a result of providing the Secured Party with such access upon the Activation Date. The transfers of amounts from the Blocked Accounts to the Secured Party's account(s) shall be effected in accordance with the Bank's usual banking practices provided however, that if such amounts are in any currency other than Canadian Dollars, such amounts will be converted at the then applicable exchange rate applied by the Bank into Canadian Dollars.

Section 3.5 Payment Not Realization

The Company and Secured Party acknowledge and agree that:

- (a) the actions and proceedings contemplated by this Article 3 are instrumental to the operation of the cash management system that is required by the Credit Agreement; and
- (b) any action or proceeding pursuant to this Article 3 shall not be considered as a realization on, or enforcement of, security or a demand for payment under the Credit Agreement but rather, following the Activation Date, among other things, a standing irrevocable direction by the Company and the Secured Party to the Bank to thereafter transfer on the

direction of the Secured Party all credit balances in the Blocked Accounts and otherwise operate the Blocked Accounts as set forth in this Article 3.

Section 3.6 Wire Transfers

The Bank shall apply and credit to the applicable Blocked Account all wire transfers directed to that Blocked Account in accordance with the Bank's standard procedures.

ARTICLE 4 RECORDS AND INFORMATION

Section 4.1 Records

The Bank shall maintain a record of all money, Cheques and other remittance items deposited in and transfers to the Blocked Accounts in accordance with the Bank's standard procedures.

Section 4.2 Provision of Information

The Bank shall provide to the Company and, upon request by the Secured Party, the Company shall provide to the Secured Party, at the Company's expense, monthly statements summarizing the daily activity in each Blocked Account. The Bank shall also provide to the Secured Party, at the Company's expense, such other information compiled by the Bank with respect to the activity, on a daily, weekly or monthly basis, in or with respect to each Blocked Account as the Secured Party may reasonably request in writing from time to time. The Company hereby authorizes the Bank to release information as contemplated herein and waives any right to confidentiality in respect of any information released by the Bank to the Secured Party pursuant to this Section 4.2.

ARTICLE 5 FEES, EXPENSES, CHARGEBACKS AND INDEMNITY

Section 5.1 Waiver of Bank's Rights

Except as expressly provided in this Agreement, the Bank waives and agrees not to assert, claim or endeavour to exercise any right of deduction, set-off, pledge or other right to claim with respect to the Blocked Accounts, or the funds therein.

Section 5.2 Company's Fee Obligations

The Company hereby agrees that it is responsible for all normal and customary fees and expenses established by the Bank from time to time for the establishment and operation of this Agreement and the Blocked Accounts (all such amounts, the "**fees and expenses**"). If any of the fees and expenses are not paid by the Company when due, the Bank shall be entitled to automatically debit, by mechanical, electronic or manual means, any of the Blocked Accounts for such fees and expenses.

Section 5.3 Chargebacks

Notwithstanding Section 5.1, the Bank shall be entitled to automatically debit, by mechanical, electronic or manual means, any one or more of the Blocked Accounts at any time and from time to time solely for:

- (a) the amount of any Cheque deposited in a Blocked Account after the date hereof which is subsequently returned to the Bank for any reason whatsoever; and
- (b) the amount of any required adjustments due to clerical errors or calculation errors directly related to any Blocked Account

((a) and (b) collectively, "**Chargebacks**"),

and provided, further, that if after an Activation Date the Bank has transferred funds on deposit in a Blocked Account at the direction of the Secured Party in respect of which the Bank is entitled to a Chargeback, the funds in the Blocked Accounts are insufficient to cover the amount of the relevant Chargeback, and the Company fails to pay such amount within fifteen (15) Business Days of Bank's written demand therefor, the Secured Party shall pay the Bank the amount of the Chargeback not recoverable from the Blocked Accounts, within ten (10) Business Days of receipt by the Secured Party of a statement signed by the Bank confirming the details of such Chargeback and the Bank's entitlement to such Chargeback under this Section 5.3 in form reasonably satisfactory to the Secured Party, provided, further that Bank must make such a demand from Secured Party within 180 days of the termination of this Agreement.

Section 5.4 Indemnity

The Company hereby agrees to pay, indemnify and hold harmless the Bank from and against any and all loss, liability, cost, claim and out-of-pocket expense incurred by it with respect to the performance of this Agreement by the Bank or any of the Bank's directors, officers or employees, unless arising from its or their own violation of law, gross negligence or wilful misconduct.

To the extent that Bank is not indemnified by the Company within fifteen (15) Business Days of demand therefor, Secured Party hereby agrees to pay, indemnify and hold harmless the Bank from and against any and all loss, liability, cost, claim and out-of-pocket expense incurred by Bank asserted by persons other than Bank and arising from instructions provided to Bank by the Secured Party, unless arising from Bank's own violation of law, gross negligence or wilful misconduct. In no event shall Secured Party be liable for any special, indirect, consequential or punitive damages, or lost profits.

ARTICLE 6 GENERAL PROVISIONS

Section 6.1 Adverse Claims

In the event that the Bank shall receive a court order or other statutory legal claim against any of the Blocked Accounts or any sums on deposit therein, whether such claim shall have arisen by

tax lien, execution of judgment, statutory attachment, garnishment, levy, claim of a trustee in bankruptcy, debtor-in-possession, court appointed receiver, or other judicial or regulatory order or process (each, a "Claim"), the Bank may, in addition to other remedies it possesses under this Agreement or at law or in equity: (a) suspend disbursements from the Blocked Accounts without any liability until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank establishing that funds may continue to be disbursed according to instructions then applicable to the Blocked Accounts, and/or (b) interplead the funds in the Blocked Accounts in respect of the subject matter of any such Claim into court. The Bank's costs, expenses and reasonable legal fees incurred in connection with any such Claim shall be reimbursed to the Bank by the Company. Upon request, the Bank shall provide a copy of any such court order or other statutory legal claim to the Company and the Secured Party.

If a bankruptcy or insolvency proceeding were commenced by or against the Company, the Bank shall be entitled, without any liability, to refuse to (a) permit withdrawals or transfers from the Blocked Accounts or (b) accept or comply with the notice thereafter received by the Bank, until the Bank shall have received an appropriate court order or other assurances reasonably acceptable to the Bank establishing that (i) continued withdrawals or transfers from the Blocked Accounts or honoring or following any instruction from the Secured Party are authorized and shall not violate any law, regulation, or order of any court and (ii) the Bank shall have received adequate protection for its right to set off against or charge the Blocked Accounts or otherwise be reimbursed for fees and expenses and Chargebacks.

Section 6.2 Power of Attorney

The Company constitutes and irrevocably appoints the Secured Party its true and lawful attorney, with full power of substitution, without limitation, to, from and after the Activation Date, demand, collect, receive and sue for all amounts which may become due or payable in respect of any Blocked Account and execute all withdrawal receipts or other orders for the Company, in its own name or in the Company's name or otherwise, which the Secured Party deems necessary or appropriate to protect and preserve its right, title and interest in any Blocked Account and, otherwise, to carry out the provisions and purposes of this Agreement.

Section 6.3 Limitation of the Bank's Liability

The Bank undertakes to perform only such duties as are expressly set forth in this Agreement and to deal with the Blocked Accounts with the degree of skill and care that the Bank accords to all accounts and funds maintained and held by it on behalf of its customers. Notwithstanding any other provision of this Agreement, it is agreed by the parties hereto that the Bank shall not be liable for any action taken by it or any of its directors, officers or employees in accordance with this Agreement except for its or their own violation of law, gross negligence or wilful misconduct. In no event shall the Bank be liable for losses or delays resulting from computer malfunctions or interruption of communication facilities which are beyond the Bank's control or from other causes which are beyond the Bank's control or from force majeure or for indirect, special or consequential damages. With respect to any instructions given or requests made by either of the Company or the Secured Party in connection with this Agreement, in no event shall the Bank be liable for any failure to comply with or satisfy the same if compliance with or satisfaction of the same would have resulted in or may potentially result in the Bank

contravening or failing to comply with any standard or customary banking practice in the industry or any of the Bank's usual banking practices, or any law, regulation, order, rule (including, without limitation, any of the CPA Rules), or other matter or thing whatsoever having the force of law. The Bank may be unable to reverse, unwind, retract, abandon or otherwise cancel any instructions or actions or processes undertaken in respect of instructions given to the Bank in accordance with this Agreement once such instructions have been given to the Bank. In such circumstances, the Company and the Secured Party both acknowledge and agree that the Bank shall have no liability to either of them for any inability or failure, or for any resulting damages suffered thereto, to comply with a request to cancel or revoke an instruction previously given to the Bank by either the Company or the Secured Party.

Section 6.4 Collection of Accounts

Notwithstanding anything in this Agreement to the contrary, the Company shall remain liable under each Receivable to observe and perform all the conditions and obligations to be observed and performed by it thereunder, all in accordance with the terms of any agreement giving rise to each such Receivable. None of the Secured Party or the Bank shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of any of this Agreement or any other agreement or the receipt by the Secured Party or the Bank of any payment relating to such Receivable nor shall the Secured Party or the Bank be obligated in any manner to perform any of the obligations of the Company under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment (except as set out in the Credit Agreement), to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Receivable (or any agreement giving rise thereto) to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been hypothecated to it, or in which a security interest may have been created in its favour, or to which it may be entitled at any time or times.

Section 6.5 Termination

- (a) Unless terminated in accordance with the terms of this Section 6.5, this Agreement shall remain in full force and effect and be binding in accordance with and to the extent of its terms until the obligations of the Company to the Secured Party under the Credit Agreement have been paid and performed in full and the Secured Party has no further obligation to make any further advances to the Company under the Credit Agreement.
- (b) The Secured Party may terminate this Agreement with written notice to the Bank and the Company.
- (c) The Bank may terminate this Agreement upon providing fifteen (15) days' prior written notice to the Secured Party and the Company, provided that such termination shall not be effective until the earlier of (a) such time as the Secured Party provides written confirmation to the Bank that the Company and the Secured Party have entered into a blocked account agreement in substantially the form of this Agreement, or in such form as may be acceptable to the Secured Party and the Company, with a replacement bank satisfactory to the Company and the Secured Party, or (b) the end of such fifteen (15) day

period. In the event of termination of this Agreement pursuant to this Section 6.5(c), the Bank shall close the Blocked Accounts concurrently with the termination of this Agreement, and the Company hereby irrevocably instructs the Bank to transfer all amounts in the Blocked Accounts to such persons and in such amounts as the Secured Party may direct, and this shall be the Bank's sole and sufficient authority for so doing.

- (d) The obligations set forth in Section 5.3, Section 5.4 and Section 6.5 shall survive termination of this Agreement.

Section 6.6 Notices

Except as otherwise provided herein, any notice to the Company, the Bank or the Secured Party under the provisions hereof shall be given by courier delivery or email transmission and if so given shall be deemed to have been received on the date given if given between 9:00 a.m. and 5:00 p.m. (local time at the Branch of Account) on a Business Day and otherwise on the first (1st) Business Day after giving such notice. Each party may from time to time notify each other party of a change of address or email address.

- (a) Notices to the Company shall be addressed as follows:

Impopharma Inc.
255 Spinnaker Way, Unit 6
Concord, ON L4K 4J1
Canada

Attention: Christine Mundkur
Telephone: (905) 760-0232
Email address: cmundkur@impopharma.com

With a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2
Canada

Attention: Gayle Noble
Telephone: (514) 397-3205
Email: gnoble@stikeman.com

- (b) Notices to the Bank shall be addressed as follows:

The Toronto-Dominion Bank
South Etobicoke Commercial Banking Centre
1315 The Queensway
Toronto Ontario M8Z 1S8
Canada

Attention: Enrique Garrido
Telephone: (416) 259-9287
Email address: enrique.garrido@td.com

(c) Notices to the Secured Party shall be addressed as follows:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
USA

Attention: Portfolio Management – Impopharma Transaction
Telephone: (301) 760-7600
Email address: notices@midcapfinancial.com

Section 6.7 Governing Law

This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the Province of Ontario and the laws of Canada applicable therein and the parties hereto irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario in respect of all matters pertaining to this Agreement.

Section 6.8 Amendments

This Agreement may only be amended or modified by written instrument signed by the parties hereto.

Section 6.9 Severability

Any provision of this Agreement that is or becomes unenforceable shall be unenforceable to the extent of such unenforceability without invalidating the remaining provisions hereof. To the extent permitted by applicable law, each of the parties hereby waives any provision of law that renders any provision hereof unenforceable in any respect.

Section 6.10 Authorization

For the purposes of this Agreement, any attorney, officer, employee or agent of the Secured Party shall be authorized to act and to give instructions and notice on behalf of the Secured Party hereunder and any attorney, officer, manager or agent of the Bank shall be authorized to act and give instructions and notice on behalf of the Bank hereunder.

Section 6.11 Remedies Cumulative

The rights enumerated in this Agreement are in addition to and not in substitution for any other rights of the Secured Party pursuant to any security held by the Secured Party and except as otherwise contemplated in this Agreement, nothing in this Agreement is to be interpreted as restricting the rights of the Secured Party pursuant to any security held by the Secured Party.

Section 6.12 Further Assurances

The parties shall at all times do, execute, acknowledge and deliver such acts, deeds and agreements as may be reasonably necessary or desirable to give effect to the terms of this Agreement.

Section 6.13 No Fiduciary Obligations

Nothing in this Agreement shall constitute any party to this Agreement a fiduciary in relation to any other party to this Agreement.

Section 6.14 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns; provided that this Agreement may not be assigned by the Company without the prior written consent of the Bank. Secured Party may assign this Agreement upon prior written notice to Bank; provided, that such assignee must assume in writing or by operation of law all of Secured Party's obligations under this Agreement and that such assignee is not an entity that the Bank is prohibited to deal with.

Section 6.15 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

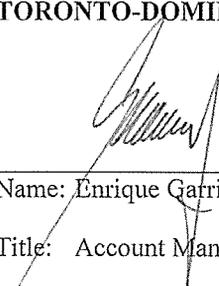
Section 6.16 Electronic Execution

Any party may deliver an executed signature page to this Agreement by electronic transmission and such delivery will be as effective as delivery of a manually executed copy of the Agreement by such party.

[SIGNATURE PAGE FOLLOWS]

The parties have executed this Agreement as of the date first written above.

THE TORONTO-DOMINION BANK

By: 

Name: Enrique Garrido

Title: Account Manager

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P., its
investment manager

By: Apollo Capital Management GP, LLC, its
general partner

By:

Name: Maurice Amsellem

Title: Authorized Signatory

IMPOPHARMA INC.

By:

Name:

Title:

The parties have executed this Agreement as of the date first written above.

THE TORONTO-DOMINION BANK

By:

Name:

Title:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P., its
investment manager

By: Apollo Capital Management GP, LLC, its
general partner

By:



Name: Michael Levin

Title: Authorized Signatory

IMPOPHARMA INC.

By:

Name:

Title:

The parties have executed this Agreement as of the date first written above.

THE TORONTO-DOMINION BANK

By:

Name:

Title:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P., its
investment manager

By: Apollo Capital Management GP, LLC, its
general partner

By:

Name: Michael Levin

Title: Authorized Signatory

IMPOPHARMA INC.

By:



Name: Vien Brewster

Title: Vice President, Finance and Secretary

**SCHEDULE A
ACTIVATION NOTICE**

To: The Toronto-Dominion Bank (the “**Bank**”)

Re: Blocked Accounts Agreement, dated July 8, 2016 among Impopharma Inc. (the “**Company**”), MidCap Financial Trust (the “**Secured Party**”) and the Bank (as amended, restated, supplemented or otherwise modified from time to time, the “**Blocked Accounts Agreement**”).

Terms with initial capital letters in this notice and not otherwise defined herein shall have the meanings given to them in the Blocked Accounts Agreement.

The Secured Party hereby notifies the Bank that, pursuant to Article 3 of the Blocked Accounts Agreement, commencing on the Activation Date, the Secured Party shall have access to the Company’s Web Business Banking Wire Payments Service with the Bank and shall be entitled to initiate wire payments from the Blocked Accounts and to any other rights of access to the Blocked Accounts as provided in Article 3 of the Blocked Accounts Agreement.

Dated ●, 20●.

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P., its
investment manager

By: Apollo Capital Management GP, LLC, its
general partner

By:

Name:

Title: Authorized Signatory

SCHEDULE C
CONSENT TO RECEIVER

TO: Royal Bank of Canada ("MidCap")

AND TO: MidCap's solicitors, DLA Piper (Canada) LLP

IMPOPHARMA INC. (the "Debtor") hereby consents to: (i) the immediate appointment by MidCap of a private receiver or receiver and manager in respect of the Debtor's assets, property and undertaking and any and all of the Debtor's books and records (collectively, the "Assets"); and/or (ii) the immediate appointment by Court order of an interim receiver, receiver or receiver and manager of the Assets pursuant to subsections 47(1) and 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act*.

DATED this 25 day of July, 2018

IMPOPHARMA INC.

By: 
Name: Vien Brewster
Title: CFO

I have authority to bind the corporation.

**SCHEDULE D
CASHFLOW PROJECTION**

Impopharma Inc. (the "Company")
 Projected Statement of Cash Flow under a Notice of Intention to file a proposal ("NOI") filing
 For the period between July 21 to September 28, 2018
 (In U.S. Dollars)

DRAFT

	Notes	Week ending:										Total
		27-Jul-18	3-Aug-18	10-Aug-18	17-Aug-18	24-Aug-18	31-Aug-18	7-Sep-18	14-Sep-18	21-Sep-18	28-Sep-18	
Receipts	1											
Receipts		-	-	-	-	-	-	-	-	-	-	-
SR&ED	2	-	-	-	-	-	-	769,231	-	-	-	769,231
HST Receivable		-	-	-	-	-	25,000	-	-	-	-	25,000
Other		-	-	-	-	-	-	-	-	-	-	-
Total Receipts		-	-	-	-	-	25,000	769,231	-	-	-	794,231
Disbursements	3											
Payroll & Benefits		93,025	22,061	5,821	53,954	150	54,300	22,061	59,775	-	54,450	365,596
Insurance		-	-	-	-	-	17,308	7,692	-	-	-	25,000
Laboratory costs		12,231	991	-	408	8,782	-	-	7,500	835	5,000	35,746
Lease payment		-	3,925	-	-	-	-	3,925	-	-	-	7,850
Rent		-	11,386	-	-	-	-	11,386	-	-	-	22,773
SG&A		637	6,136	2,836	1,587	5,057	1,341	1,777	1,000	2,535	3,299	26,205
Utilities		3,011	-	-	1,243	138	2,692	-	477	766	2,446	10,774
Professional fees		88,462	17,521	17,521	17,521	17,521	13,675	17,521	17,521	17,521	17,521	242,308
Development costs - Albuterol		68,078	1,730	27,534	2,820	50	17,150	-	5,000	-	-	122,363
Development costs - Ipratropium		-	11,992	-	-	-	-	-	-	-	-	11,992
Development costs - Sumatriptan		1,726	12,088	1,525	-	7,000	-	-	-	-	-	22,339
Loan payment	2, 4	1,825,000	-	-	-	-	-	-	769,231	-	-	2,594,231
Capital expenditures		-	-	-	-	8,345	-	-	-	-	-	8,345
Retention bonus		-	-	-	-	-	-	-	-	-	267,998	267,998
Total Disbursements		2,092,170	87,831	55,237	77,534	47,043	106,466	64,363	860,504	21,657	350,714	3,763,518
Net Cash Flow		(2,092,170)	(87,831)	(55,237)	(77,534)	(47,043)	(106,466)	(39,363)	(91,273)	(21,657)	(350,714)	(2,969,288)
Bank Balance												
Opening		2,971,567	879,397	791,566	736,329	658,795	611,752	505,286	465,923	374,650	352,993	2,971,567
Net Cash Flow		(2,092,170)	(87,831)	(55,237)	(77,534)	(47,043)	(106,466)	(39,363)	(91,273)	(21,657)	(350,714)	(2,969,288)
Ending Bank Balance		879,397	791,566	736,329	658,795	611,752	505,286	465,923	374,650	352,993	2,279	2,279

Notes:

1. Excludes the potential sale of Sumatriptan to the Company's partner.
2. The company has received confirmation that the SR&ED claim will be paid as filed. Once received, the funds will be paid to the lender.
3. Cost disbursements are based on a reduced level of operations (i.e. reduced staffing, reduced development costs etc.).
4. An initial payment of \$1,825,000 is comprised of (1) loan repayment of \$1,750,000 (2) forbearance fee of \$55,000 and (3) professional fee reimbursement of \$20,000 (estimate).

This is Exhibit "E" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.

A handwritten signature in black ink, appearing to be 'L. H.', written over a horizontal line.

A Commissioner for Taking Affidavits in
and for the Province of Ontario

CREDIT AND SECURITY AGREEMENT

THIS CREDIT AND SECURITY AGREEMENT (this “**Agreement**”), dated as of July 8, 2016 (the “**Closing Date**”) by and among **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (“**MidCap**”) as administrative agent, the Lenders listed on the Credit Facility Schedule attached hereto and otherwise party hereto from time to time (each a “**Lender**”, and collectively the “**Lenders**”), and **IMPOPHARMA INC.**, a corporation validly existing under the *Business Corporations Act* (Ontario) (“**Impopharma**”), **IMPOPHARMA US, INC.** a Delaware corporation and the other entities shown as signatories hereto as a Borrower, provides the terms on which Lenders agree to lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 15. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All headings numbered without a decimal point are herein referred to as “Articles,” and all paragraphs numbered with a decimal point (and all subparagraphs or subsections thereof) are herein referred to as “Sections.”

2. CREDIT FACILITIES AND TERMS

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay to each Lender in accordance with each Lender’s respective Pro Rata Share of each Credit Facility, the outstanding principal amount of all Credit Extensions made by the Lenders under such Credit Facility and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Credit Facilities. Subject to the terms and conditions hereof, each Lender, severally, but not jointly, agrees to make available to Borrower Credit Extensions in respect of each Credit Facility set forth opposite such Lender’s name on the Credit Facility Schedule, in each case not to exceed such Lender’s commitment as identified on the Credit Facility Schedule (such commitment of each Lender, as it may be amended to reflect assignments made in accordance with this Agreement or terminated or reduced in accordance with this Agreement, its “**Applicable Commitment**”, and the aggregate of all such commitments of all Lenders, the “**Applicable Commitments**”).

2.3 Credit Facilities.

(a) Nature of Credit Facility; Credit Extension Requests. Credit Extensions in respect of a Credit Facility may be requested by Borrower during the Draw Period for such Credit Facility. For any Credit Extension requested under a Credit Facility (other than a Credit Extension on the Closing Date), Agent must receive the completed Credit Extension Form by 12:00 noon (New York time) fifteen (15) Business Days prior to the date the Credit Extension is to be funded. To the extent any Credit Facility proceeds are repaid for any reason, whether voluntarily or involuntarily (including repayments from insurance or condemnation proceeds), Agent and the Lenders shall have no obligation to re-advance such sums to Borrower.

(b) Principal Payments. Principal payable on account of a Credit Facility shall be payable by Borrower to Agent, for the account of the applicable Lenders in accordance with their respective Pro Rata Shares, immediately upon the earliest of (i) the date(s) set forth in the Amortization Schedule for such Credit Facility (or if no such Amortization Schedule is attached, then upon Agent’s demand for payment), or (ii) the Maturity Date. Except as this Agreement may specifically provide otherwise, all prepayments of Credit Extensions under the Credit Facilities shall be applied by Agent to the applicable Credit Facility in inverse order of maturity. The monthly payments required under the Amortization Schedule shall continue in the same amount (for so long as the applicable Credit Facility shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the applicable Credit Facility.

(c) Mandatory Prepayment. If a Credit Facility is accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Agent, for payment to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Credit Facility and all other Obligations, plus accrued and unpaid interest thereon, (ii) any fees payable under the Fee Letters by reason of such prepayment, (iii) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (iv) all other sums that shall have become due and payable, including Protective Advances. Additionally, at the election of Agent, Borrower shall prepay the Credit Facilities (to be allocated pro rata among the outstanding Credit Extensions under all Credit Facilities) in the following amounts: (A) on the date on which any Credit Party (or Agent as loss payee or assignee) receives any casualty proceeds in excess of Twenty-Five Thousand Dollars (\$25,000) for personal property, or in excess of Fifty Thousand Dollars (\$50,000) for real property, in respect of assets upon which Agent maintained a Lien, an amount equal to one hundred percent (100%) of such proceeds (net of out-of-pocket expenses and, in the case of personal property, repayment of any permitted purchase money debt encumbering the personal property that suffered such casualty), or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations; and (B) upon receipt by any Credit Party of the proceeds of any asset disposition of personal property not made in the Ordinary Course of Business (other than transfers permitted by Section 7.1) an amount equal to one hundred percent (100%) of the net cash proceeds of such asset disposition (net of out-of-pocket expenses and repayment of any permitted purchase money debt encumbering such asset), or such lesser portion as Agent shall elect to apply to the Obligations. Notwithstanding the foregoing and without limiting the provisions of Section 7.1, (a) so long as no Default or Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy or asset disposition, in each case up to Five Hundred Thousand Dollars (\$500,000) in the aggregate, with respect to any property loss or disposition, as applicable, in any one year, toward the replacement or repair of destroyed, damaged or disposed property; provided that any such replaced or repaired property (x) shall be of greater, equal, or like value as the replaced or repaired Collateral and (y) shall be deemed Collateral in which Agent and the Lenders have been granted a first priority security interest, and (b) after the occurrence and during the continuance of a Default or Event of Default, all proceeds payable under such casualty policy or disposition, as applicable, shall, at the option of Agent, be payable to Agent, for the ratable benefit of the Lenders, on account of the Obligations.

(d) Permitted Prepayment. Except as provided below, Borrower shall have no right to prepay the Credit Extensions made in respect of a Credit Facility. After the Closed Period, if any, for the applicable Credit Facility as specified in the Credit Facility Schedule therefor, Borrower shall have the option to prepay the Prepayable Amount (as defined below) of such Credit Facility advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Agent and each Lender of its election to prepay the Prepayable Amount at least thirty (30) days prior to such prepayment, and (ii) pays to Agent, for payment to each applicable Lender in accordance with its respective Pro Rata Share, on the date of such prepayment, an amount equal to the sum of (A) the Prepayable Amount, plus accrued interest thereon, (B) any fees payable under the Fee Letters by reason of such prepayment, (C) the Applicable Prepayment Fee as specified in the Credit Facility Schedule for the Credit Facility being prepaid, and (D) all Protective Advances. The term "Prepayable Amount" means all, but not less than all, of the Credit Extensions and all other Obligations under all Credit Facilities.

2.4 Reserved.

2.5 Reserved.

2.6 Interest and Payments: Administration.

(a) Interest; Computation of Interest. Each Credit Extension shall bear interest on the outstanding principal amount thereof from the date when made until paid in full at a rate per annum equal to the Applicable Interest Rate. Each Lender may, upon the failure of Borrower to pay any fees or interest as required herein, capitalize such interest and fees and begin to accrue interest thereon until paid in full, which such interest shall be at a rate per annum equal to the Applicable Interest Rate unless and until the Default Rate shall otherwise apply. All other Obligations shall bear interest on the outstanding amount thereof from the date they first become payable by Borrower under the Financing Documents until paid in full at a rate per annum equal to the Applicable Interest Rate unless and until the Default Rate shall otherwise apply. Interest on the Credit Extensions and all fees

payable under the Financing Documents shall be computed on the basis of a 360-day year and the actual number of days elapsed in the period during which such interest accrues. In computing interest on any Credit Extension or other advance, the date of the making of such Credit Extension or advance shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension or advance is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension or advance. As of each Applicable Interest Rate Determination Date, Agent shall determine (which determination shall, absent manifest error in calculation, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Credit Extensions.

(b) Default Rate. Upon the election of Agent following the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five hundred basis points (5.00%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this subsection is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or the Lenders.

(c) Payments Generally. Except as otherwise provided in this Agreement, including pursuant to Section 2.6(c), or as otherwise directed by Agent, all payments in respect of the Obligations shall be made to Agent for the account of the applicable Lenders in accordance with their Pro Rata Share. Payments of principal and interest in respect of each Credit Facility shall be made to each applicable Lender identified on the applicable Credit Facility Schedule. All Obligations are payable upon demand of Agent in the absence of any other due date specified herein. All fees payable under the Financing Documents shall be deemed non-refundable as of the date paid. Any payment required to be made to Agent or a Lender under this Agreement may be made by debit or automated clearing house payment initiated by Agent or such Lender from any of Borrower’s deposit accounts, including the Designated Funding Account, and Borrower hereby authorizes Agent and each Lender to debit any such accounts for any amounts Borrower owes hereunder when due. Without limiting the foregoing, Borrower shall tender to Agent and the Lenders any authorization forms as Agent or any Lender may require to implement such debit or automated clearing house payment. These debits or automated clearing house payments shall not constitute a set-off. Payments of principal and/or interest received after 12:00 noon New York time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower under any Financing Document shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. The balance of the Obligations, as recorded in Agent’s books and records at any time, shall be conclusive and binding evidence of the amounts due and owing to Agent and the Lenders by each Borrower absent manifest error; provided, however, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower’s duty to pay all amounts owing hereunder or under any Financing Document. Agent shall provide Borrower with a monthly statement regarding the Credit Extensions (but neither Agent nor any Lender shall have any liability in respect of any failure by Agent to provide any such statement). Unless Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrower in all respects as to all matters reflected therein.

(d) Interest Payments; Maturity Date. Commencing on the first (1st) Payment Date following the funding of a Credit Extension, and continuing on the Payment Date of each successive month thereafter through and including the Maturity Date, Borrower shall make monthly payments of interest, in arrears, calculated as set forth in this Section 2.6. All unpaid principal and accrued interest is due and payable in full on the Maturity Date or any earlier date specified herein. If the Obligations are not paid in full on or before the Maturity Date, all interest thereafter accruing shall be payable immediately upon accrual.

(e) Fees. Borrower shall pay, as and when due and payable under the terms of the Fee Letters, to Agent and each Lender, as applicable, for their own accounts and not for the benefit of any other Lenders, the fees set forth in the Fee Letters.

(f) Protective Advances. Borrower shall pay to Agent for the account of the Lenders all Protective Advances (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement, the other Financing Documents and the Warrants) when due under any Financing Document (and in the absence of any other due date specified herein, such Protective Advances shall be due upon demand).

(g) Maximum Lawful Rate. In no event shall the interest charged hereunder with respect to the Obligations exceed the maximum amount permitted under the Laws of the State of Maryland. Notwithstanding anything to the contrary in any Financing Document, if at any time the rate of interest payable hereunder (the "**Stated Rate**") would exceed the highest rate of interest permitted under any applicable Law to be charged (the "**Maximum Lawful Rate**"), then for so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable shall be equal to the Maximum Lawful Rate; *provided, however*, that if at any time thereafter the Stated Rate is less than the Maximum Lawful Rate, Borrower shall, to the extent permitted by Law, continue to pay interest at the Maximum Lawful Rate until such time as the total interest received is equal to the total interest which would have been received had the Stated Rate been (but for the operation of this provision) the interest rate payable. Thereafter, the interest rate payable shall be the Stated Rate unless and until the Stated Rate again would exceed the Maximum Lawful Rate, in which event this provision shall again apply. In no event shall the total interest received by any Lender exceed the amount which it could lawfully have received, had the interest been calculated for the full term hereof at the Maximum Lawful Rate. If, notwithstanding the prior sentence, any Lender has received interest hereunder in excess of the Maximum Lawful Rate, such excess amount shall be applied to the reduction of the principal balance of such Lender's Credit Extensions or to other amounts (other than interest) payable hereunder, and if no such Credit Extensions or other amounts are then outstanding, such excess or part thereof remaining shall be paid to Borrower. In computing interest payable with reference to the Maximum Lawful Rate applicable to any Lender, such interest shall be calculated at a daily rate equal to the Maximum Lawful Rate *divided by* the number of days in the year in which such calculation is made.

(h) Taxes; Additional Costs.

(i) Any and all payments by or on account of any obligation of Borrower hereunder shall be made without deduction or withholding for any Taxes, except as required by applicable law. For purposes of this Section 2.6(h), the term "applicable law" shall include FATCA. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then Withholding Agent shall make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.6(h)) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(ii) Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for the payment of, any Other Taxes.

(iii) Borrower shall indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 2.6(h)) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender (with a copy to Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(iv) Each Lender shall severally indemnify the Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that Borrower has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 13.1(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with this Agreement or any Obligation, and any reasonable expenses

arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender pursuant to this Agreement or otherwise payable by the Agent to the Lender from any other source against any amount due to Agent under this paragraph (iv).

(v) As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this Section 2.6(h), Borrower shall deliver to Agent the original or a copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent.

(vi) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made in connection with this Agreement or any Obligation shall deliver to Borrower and the Agent, at the time or times reasonably requested by Borrower or the Agent, such properly completed and executed documentation reasonably requested by Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or the Agent as will enable Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.6(h)(vii)(A), (vii)(B) and (vii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(vii) Without limiting the generality of the foregoing,

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

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

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

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

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the IRC, (x) executed copies of IRS Form W-8BEN-E or W-8BEN, as applicable and (y) a certification to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with such Other Tax Certification as Agent may reasonably request from time to time; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E or W-8BEN, as

applicable, IRS Form W-9, and/or such Other Tax Certification from each beneficial owner as Agent may reasonably request, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide such Other Tax Certification as may be reasonably required by Agent on behalf of each such direct and indirect partner;

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

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

Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 2.6(h)(vi) or (vii) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify Borrower and the Agent in writing of its legal inability to do so.

(viii) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.6(h) (including by the payment of additional amounts pursuant to this Section 2.6(h)), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Section 2.6(h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.6(h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.6(h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(ix) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a

consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrower shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction; provided, however, that notwithstanding anything in this Agreement to the contrary, (A) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (B) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(x) If any Lender requires compensation under this Section 2.6(h), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to this Section 2.6(h), then, upon the written request of Borrower, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Credit Extensions hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (A) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (B) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(xi) Each party's obligations under this Section 2.6(h) shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, and the repayment, satisfaction or discharge of all Obligations hereunder.

(i) Administrative Fees and Charges.

(i) Borrower shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of the books and records of the Credit Parties, audits, valuations or appraisals of the Collateral, audits of Borrower's compliance with applicable Laws and such other matters as Agent shall deem reasonably appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to any Borrower; provided, that, as long as no Event of Default has occurred within the preceding twelve (12) months, Agent shall be entitled to such reimbursement for no more than one audit and inspection per calendar year.

(ii) If payments of principal or interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents, are not timely made and remain overdue for a period of five (5) days, Borrower, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(j) Canadian Limitations.

(i) For the purposes of the Interest Act (Canada) and disclosure thereunder, whenever any interest or any fee to be paid hereunder or in connection herewith is to be calculated on the basis of a 360-day or 365-day year, the yearly rate of interest to which the rate used in such calculation is equivalent is the rate so used multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by 360 or 365, as applicable. The rates of interest under this Agreement are nominal rates, and not effective rates or yields. The principle of deemed reinvestment of interest does not apply to any interest calculation under this Agreement.

(ii) Notwithstanding the foregoing, if (i) a Security Document creates a mortgage on real property or a hypothec on immovables of a Credit Party or (ii) the rate provided for in Section 2.6(b) is otherwise determined to be unenforceable against a Credit Party, then, in either case, the Credit Party shall pay interest at a rate per annum equal to the rate otherwise applicable to such Credit Extensions or, in the case of any amount not constituting principal or interest on a Credit Extension, at a rate equal to the Applicable Interest Rate, provided that, without limiting the effect of this Section 2.6(j)(ii), nothing in Section 2.6(j)(ii) shall preclude the operation of Section 2.6(b) in respect of a Credit Party where (A) a Security Document that creates a mortgage on real property or a hypothec on immovables of a Credit Party also creates a Lien on other property and assets of such Credit Party; or (B) the principal of or interest on any Credit Extension or any fee or other amount payable by such Credit Party hereunder is also secured by a Lien other than a mortgage on real property or a hypothec on immovables.

(iii) If any provision of this Agreement would oblige a Canadian Credit Party to make any payment of interest or other amount payable to any Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by that Lender of "interest" at a "criminal rate" (as such terms are construed under the Criminal Code (Canada)), then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by applicable law or so result in a receipt by that Lender of "interest" at a "criminal rate", such adjustment to be effected, to the extent necessary (but only to the extent necessary), as follows:

(A) first, by reducing the amount or rate of interest; and

(B) thereafter, by reducing any fees, commissions, costs, expenses, premiums and other amounts required to be paid which would constitute interest for purposes of section 347 of the Criminal Code (Canada).

2.7 Secured Promissory Notes. At the election of any Lender made as to each Credit Facility for which it has made Credit Extensions, each Credit Facility shall be evidenced by one or more secured promissory notes in form and substance satisfactory to Agent and the Lenders (each a "**Secured Promissory Note**"). Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note, Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

3. CONDITIONS OF CREDIT EXTENSIONS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make the initial advance in respect of a Credit Facility is subject to receipt by Agent, in form and substance satisfactory to Agent, of such documents, and completion of such other matters, as Agent may reasonably deem necessary or appropriate, including, without limitation, all items listed on the Closing Deliveries Schedule attached hereto.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

(a) satisfaction of all Applicable Funding Conditions for the applicable Credit Extension as set forth in the Credit Facility Schedule, if any, in each case each in form and substance satisfactory to Agent and each Lender;

(b) timely receipt by the Agent and each Lender of an executed Credit Extension Form in the form attached hereto;

(c) (i) for Credit Extensions made on the Closing Date, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all respects on the Closing Date; provided, however, that those representations and warranties expressly referring to a specific date shall be true, correct and complete in all respects as of such date; and

(ii) for Credit Extensions made after the Closing Date, if any, the representations and warranties in Article 5 and elsewhere in the Financing Documents shall be true, correct and complete in all material respects on the date of the Credit Extension Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Article 5 and elsewhere in the Financing Documents remain true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(d) no Default or Event of Default shall have occurred and be continuing or result from the Credit Extension;

(e) Agent shall be satisfied with the results of any searches conducted under Section 3.5;

(f) receipt by Agent of such evidence as Agent shall request to confirm that the deliveries made in Section 3.1 remain current, accurate and in full force and effect, or if not, updates thereto, each in form and substance satisfactory to Agent; and

(g) as determined in such Lender's sole discretion, there has not been any Material Adverse Change or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Agent.

3.3 Method of Borrowing. Each Credit Extension in respect of each Credit Facility shall be in an amount at least equal to the applicable Minimum Credit Extension Amount for such Credit Facility as set forth in the Credit Facility Schedule or such lesser amount as shall remain undisbursed under the Applicable Commitments for such Credit Facility. The date of funding for any requested Credit Extension shall be a Business Day. To obtain a Credit Extension, Borrower shall deliver to Agent a completed Credit Extension Form executed by a Responsible Officer (other than a Credit Extension on the Closing Date). Agent may rely on any notice given by a person whom Agent reasonably believes is a Responsible Officer or designee thereof. Agent and the Lenders shall have no duty to verify the authenticity of any such notice.

3.4 Funding of Credit Facilities. In Agent's discretion, Credit Extensions may be funded by Agent on behalf of the Lenders or by the Lenders directly. If Agent elects to fund any Credit Extension on behalf of the Lenders, upon the terms and subject to the conditions set forth in this Agreement, each Lender, severally and not jointly, shall make available to Agent its Pro Rata Share of the requested Credit Extension, in lawful money of the United States of America in immediately available funds, prior to 11:00 a.m. (New York time) on the specified date for the Credit Extension. Agent (or if Agent elects to have each Lender fund its Credit Extensions to Borrower directly, each Lender) shall, unless it shall have determined that one of the conditions set forth in Section 3.1 or 3.2, as applicable, has not been satisfied, by 2:00 p.m. (New York time) on the specified date for the Credit Extension, credit the amounts received by it in like funds to Borrower by wire transfer to the Designated Funding Account (or to the account of Borrower in respect of the Obligations, if the Credit Extension is being made to pay an Obligation of Borrower). A Credit Extension made prior to the satisfaction of any conditions set forth in Section 3.1 or 3.2 shall not constitute a waiver by Agent or Lenders of Borrower's obligation to satisfy such conditions, and any such Credit Extension made in the absence of such satisfaction shall be made in each Lender's discretion.

3.5 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrower's expense, the searches described in clauses (a), (b), and (c) below against Borrower and any other Credit Party, the results of which are to be consistent with Borrower's representations and warranties under this Agreement and the reasonably satisfactory results of which shall be a condition precedent to all Credit Extensions requested by Borrower: (a) title investigations, UCC or personal property searches, writ searches and fixture filings searches; (b) judgment, pending litigation, federal tax

lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent.

4.2 Representations and Covenants.

(a) As of the Closing Date, Borrower has no ownership interest in any Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than as disclosed on the **Disclosure Schedule** attached hereto).

(b) Borrower shall promptly (and in any event within 10 days of acquiring any of the following) deliver to Agent all tangible Chattel Paper and all Instruments and documents owned at any time by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrower shall provide Agent with "control" (as in the Code) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the Code. Borrower also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Borrower will mark conspicuously all such Chattel Paper and all such Instruments and Documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such Instruments and Documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents.

(c) Borrower shall promptly (and in any event within 10 days of acquiring any of the following) deliver to Agent all letters of credit on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent, except if such letter of credit rights are "supporting obligations" as defined in the Code. Borrower shall take any and all actions as may be necessary or desirable, or that Agent may request, from time to time, to cause Agent to obtain exclusive "control" (as defined in the Code) of any such letter of credit rights (other than those constituting supporting obligations) in a manner acceptable to Agent.

(d) Borrower shall promptly (and in any event within 10 days) advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect to such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrower shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(e) Except for (i) Inventory in an aggregate amount of no more than One Hundred Thousand Dollars (\$100,000) and (ii) Inventory at the Spinnaker Way Location, no Inventory or other Collateral shall at any time be in the possession or control of any warehouse, consignee, bailee or any of Borrower's agents

or processors without prior written notice to Agent and the receipt by Agent, if Agent has so requested, of warehouse receipts, consignment agreements or bailee lien waivers (as applicable) satisfactory to Agent prior to the commencement of such possession or control. Borrower shall, upon the request of Agent, notify any such warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Financing Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall, in Agent's discretion, use commercially reasonable efforts to obtain an Access Agreement or other acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(f) Upon request of Agent, Borrower shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible personal property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrower shall not permit any such tangible personal property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(g) As of the Closing Date and each subsequent date that the representations and warranties under this Agreement are remade, all Deposit Accounts, Securities Accounts, Commodity Accounts or other bank accounts or investment accounts owned by Borrower, together with the purpose of such accounts and the financial institutions at which such accounts reside, are listed on the **Disclosure Schedule**.

(h) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements and/or Personal Property Security Act financing statements relating to its Liens on all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof. Any financing statement may include a notice that any disposition of the Collateral in contravention of this Agreement, by either Borrower or any other Person, shall be deemed to violate the rights of Agent and the Lenders under the Code.

(i) As of the Closing Date, no Borrower holds, and after the Closing Date Borrower shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrower shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(j) Borrower shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows on the Closing Date, on the date of each Credit Extension, and on such other dates when such representations and warranties under this Agreement are made or deemed to be made:

5.1 Due Organization, Authorization, Power and Authority.

(a) Each Credit Party is duly organized, validly existing and in good standing (if applicable in such entity's jurisdiction of formation) in its respective jurisdiction of formation. Each Credit Party

has the power to own its assets and is qualified and licensed to do business and is in good standing (if applicable in such jurisdiction) in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. The Financing Documents have been duly authorized, executed and delivered by each Credit Party and constitute legal, valid and binding agreements enforceable in accordance with their terms. The execution, delivery and performance by each Credit Party of each Financing Document executed or to be executed by it is in each case within such Credit Party's powers.

(b) The execution, delivery and performance by each Credit Party of the Financing Documents to which it is a party do not (i) conflict with any of such Credit Party's organizational documents, including any unanimous shareholder agreement (as defined in section 108 of the *Business Corporations Act* (Ontario)) or any other shareholder agreement in effect; (ii) contravene, conflict with, constitute a default under or violate any Law; (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Credit Party or any of its property or assets may be bound or affected; (iv) require any action by, filing, registration, or qualification with, or Required Permit from, any Governmental Authority (except such Required Permits which have already been obtained and are in full force and effect); or (v) constitute a default or otherwise cause a breach under any Material Agreement. No Credit Party is in default under any agreement to which it is a party or by which it is bound in which the default would reasonably be expected to result in a Material Adverse Change.

5.2 Litigation. Except as disclosed on the **Disclosure Schedule** or, after the Closing Date, pursuant to Section 6.7, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Responsible Officers, threatened in writing against any Credit Party which involves the possibility of any judgment or liability of more than One Hundred Thousand Dollars (\$100,000) or that could result in a Material Adverse Change, or which questions the validity of the Financing Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing, nor does any Credit Party have reason to believe that any such actions, suits, proceedings or investigations are threatened.

5.3 No Material Deterioration in Financial Condition; Financial Statements. All financial statements for the Credit Parties delivered to Agent or any Lender fairly present, in conformity with GAAP, in all material respects the consolidated financial condition and consolidated results of operations of such Credit Party. There has been no material deterioration in the consolidated financial condition of any Credit Party from the most recent financial statements and projections submitted to Agent or any Lender. There has been no material adverse deviation from the most recent annual operating plan of Borrower delivered to Agent and the Lenders.

5.4 Solvency. No Credit Party (i) has committed any act of bankruptcy, (ii) is insolvent or unable to meet its obligations as they generally become due, for any reason, or has ceased paying its current obligations in the ordinary course of business as they generally become due, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (iii) has made any petition for a receiving order in bankruptcy, made a voluntary assignment in bankruptcy, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, or (iv) as of the Closing Date, is involved in, has initiated or has had initiated against it an Insolvency Proceeding. The aggregate property of each Canadian Credit Party is, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would be sufficient, to enable payment of all its obligations, due and accruing due. The fair value of the assets of each U.S. Credit Party (including goodwill *minus* disposition costs) exceeds the fair value of its liabilities. After giving effect to the transactions described in this Agreement, (a) no U.S. Credit Party is left with unreasonably small capital in relation to its business as presently conducted, and (b) each U.S. Credit Party is able to pay its debts (including trade debts) as they mature.

5.5 Subsidiaries; Investments; Margin Stock. Borrower and its Subsidiaries do not own any stock, partnership interest or other equity securities, except for Permitted Investments. Without limiting the foregoing, Borrower and its Subsidiaries do not own or hold any Margin Stock.

5.6 Tax Returns and Payments; Pension Contributions. Each Credit Party has timely filed all required tax returns and reports, and, except for those Taxes that are subject to a Permitted Contest, each Credit Party has

timely paid all foreign, federal, state and material local Taxes, assessments, deposits and contributions owed by such Credit Party. Other than as disclosed to Agent in accordance with Section 6.2, Borrower is unaware of any claims or adjustments proposed for any prior tax years of any Credit Party which could result in additional Taxes becoming due and payable by such Credit Party. No Credit Party nor any trade or business (whether or not incorporated) that is under common control with any Credit Party within the meaning of Section 414(b) or (c) of the IRC (and Sections 414(m) and (o) of the IRC for purposes of the provisions relating to Section 412 of the IRC) or Section 4001 of ERISA (an "ERISA Affiliate") (i) has failed to satisfy the "minimum funding standards" (as defined in and subject to Section 412 of or Section 302 of ERISA), whether or not waived, with respect to any Pension Plan, (ii) has incurred liability with respect to the withdrawal or partial withdrawal of any Credit Party or ERISA Affiliate from any Pension Plan or incurred a cessation of operations that is treated as a withdrawal, (iii) has incurred any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA), (iv) has had any "reportable event" as defined in Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the 30-day notice requirement is waived) occur with respect to any Pension Plan or (v) failed to maintain (1) each "plan" (as defined by and subject to Section 3(3) of ERISA) in compliance in all material respects with the applicable provisions of ERISA, the IRC and other federal or state laws, and (2) the tax qualified status of each plan (as defined above) intended to be so qualified.

5.7 Intellectual Property and License Agreements. A list of (i) all Registered Intellectual Property of each Credit Party and (ii) all Material License Agreements of each Credit Party, as of the Closing Date and, as updated pursuant to Section 6.14, is set forth on the **Intangible Assets Schedule**. Such **Intangible Assets Schedule** shall be prepared by Borrower in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens other than Permitted Liens. Each Patent is valid and enforceable and no part of the Material Intangible Assets has been judged invalid or unenforceable, in whole or in part, and to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party.

5.8 Regulatory Status. All of Borrower's Products and Regulatory Required Permits are listed on the **Products Schedule** and **Required Permits Schedule**, respectively (as updated from time to time pursuant to Section 6.14), and Borrower has delivered to Agent a copy of all Regulatory Required Permits requested by Agent as of the date hereof or to the extent requested by Agent pursuant to Section 6.16. With respect to each Product, (i) Borrower and its Subsidiaries have received, and such Product is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product as currently being conducted by or on behalf of Borrower, and have provided Agent and each Lender with all notices and other information required by Section 6.16, (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, by Borrower or a Subsidiary in material compliance with all applicable Laws and Regulatory Required Permits. As of the Closing Date, there have been no Regulatory Reporting Events.

5.9 Accuracy of Schedules and Perfection Certificate. All information set forth in the **Disclosure Schedule**, **Intangible Assets Schedule**, the **Required Permits Schedule** and the **Products Schedule** is true, accurate and complete as of the Closing Date, the date of delivery of the last Compliance Certificate and any other subsequent date on which Borrower is requested to update such certificate. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date, the date of each Credit Extension and each other subsequent date on which Borrower delivers an updated Perfection Certificate pursuant to Agent's request.

5.10 Canadian Pension Plans.

(a) Each of the Canadian DB Plans (if any) are fully funded on a solvency basis and going concern basis (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities and which are consistent with GAAP).

(b) Each of the Canadian Pension Plans (if any) is duly registered under the Canadian Income Tax Act and any other applicable pension and benefit Laws that require registration of a Canadian Pension Plan (collectively, the "**Applicable Pension and Benefit Laws**"), has been administered in material compliance

with the Canadian Income Tax Act and such other Applicable Pension and Benefit Laws and no event has occurred which would reasonably be expected to cause the loss of such registered status.

(c) All material obligations of each of the Credit Parties (including fiduciary, funding, investment and administration obligations) required to be performed in connection with the Canadian Pension Plans and the funding agreements therefor have been performed on a timely basis.

(d) There are no outstanding disputes concerning the assets of the Canadian Pension Plans, except as would not reasonably be expected to result in a Material Adverse Change.

(e) As of the Closing Date, none of the Canadian Pension Plans is a Canadian DB Plan.

5.11 Legal Form. This Agreement is, and each Financing Document (subject to the performance of any perfection or registration formalities that may be required under applicable law) when duly executed and delivered by Borrower will be, in proper legal form under the laws of Borrower's jurisdiction of incorporation for the enforcement thereof against Borrower under such law, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or other similar laws relating to or affecting the rights of creditors generally, and except as the enforceability of this Agreement is subject to the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law). All formalities required in each jurisdiction in which Borrower is incorporated for the validity and enforceability of each of the Financing Documents to which Borrower is a party have been accomplished, and no Taxes are required to be paid (other than those Taxes that have been duly paid by the applicable Credit Party) and no notarization is required, for the validity and enforceability thereof.

5.13 FCPA and Anti-Corruption Law. For the immediately preceding five year period, neither Borrower nor any of its Subsidiaries nor, to the knowledge of Borrower, any director, officer, agent, employee or other Person acting in such capacity on behalf of Borrower or any of its Subsidiaries, has taken any action, directly or indirectly, that would result in a violation by such Persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "FCPA"), the Corruption of Foreign Public Officials Act (Canada), as amended, or any other applicable anti-corruption law. No part of the proceeds of the Credit Extensions shall be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the FCPA. Borrower and its Subsidiaries have conducted their businesses in compliance with applicable anti-corruption laws.

6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees as follows:

6.1 Organization and Existence; Government Compliance.

(a) Each Credit Party shall maintain its legal existence and good standing in its respective jurisdiction of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to result in a Material Adverse Change. If a Credit Party is not now a Registered Organization but later becomes one, Borrower shall promptly notify Agent of such occurrence.

(b) Each Credit Party shall comply with all Laws, ordinances and regulations to which it or its business locations is subject, the noncompliance with which would reasonably be expected to result in a Material Adverse Change. Each Credit Party shall obtain and keep in full force and effect and comply with all of the Required Permits, except where failure to have or maintain compliance with or effectiveness of such Required Permit could not reasonably be expected to result in a Material Adverse Change. Upon request of Agent or any Lender, each Credit Party shall promptly (and in any event within three (3) Business Days of such request) provide copies of any such obtained Required Permits to Agent. Borrower shall notify Agent within three (3) Business Days (but in any event prior to Borrower submitting any requests for Credit Extensions or release of any reserves) of the occurrence of any facts, events or circumstances known to a Borrower, whether threatened,

existing or pending, that could cause any Required Permit that is material to the business of the Credit Parties (taken as a whole) to become limited, suspended or revoked. Notwithstanding the foregoing, each Credit Party shall comply with Section 6.16 as it relates to Regulatory Required Permits and to the extent that there is a conflict between this Section and Section 6.16 as it relates to Regulatory Required Permits, Section 6.16 shall govern.

6.2 Financial Statements, Reports, Certificates.

(a) Each Credit Party shall deliver to Agent and each Lender: (i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared cash reconciliation covering such Credit Party's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent and each Lender; (ii) as soon as available, but no later than thirty (30) days after the last day of each fiscal quarter, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering such Credit Party's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Agent and each Lender; (iii) as soon as available, but no later than one hundred twenty (120) days after the last day of a Credit Party's fiscal year, audited consolidated and consolidating financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Agent and each Lender in its reasonable discretion; (iv) as soon as available after approval thereof by such Credit Party's governing board, but no later than thirty (30) days after the last day of such Credit Party's fiscal year, such Credit Party's financial projections for the current fiscal year including amendments or updates approved by the board of directors; (v) within five (5) days of delivery, copies of all material statements, reports and notices made available to all of such Credit Party's security holders or to any holders of Subordinated Debt; (vi) in the event that such Credit Party is or becomes subject to the reporting requirements under the Securities Exchange Act of 1934, as amended, within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission ("SEC") or a link thereto on such Credit Party's or another website on the Internet; (vii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by a Credit Party, which statements may be provided to Agent and each Lender by Borrower or directly from the applicable institution(s); (viii) promptly (and in any event within ten (10) days of any request therefor) such readily available budgets, sales projections, operating plans, financial information and other information, reports or statements regarding the Credit Parties or their respective businesses, contractors and subcontractors reasonably requested by Agent or any Lender; and (ix) within ten (10) days after any Credit Party becomes aware of any claim or adjustment proposed for any prior tax years of any Credit Party or any of their Subsidiaries which could result in material additional Taxes becoming due and payable by such Credit Party or Subsidiary, notice of such claim or adjustment.

(b) Within thirty (30) days after the last day of each month, Borrower shall deliver to Agent and each Lender with the applicable monthly financial reporting described above, a duly completed Compliance Certificate signed by a Responsible Officer.

(c) Borrower shall, and shall cause each Credit Party to, (i) keep proper books of record and account in accordance with GAAP in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities and (ii) make all such books of record and account available to Agent electronically at all times. Upon reasonable prior written notice and during business hours (which such limitations shall not apply if a Default or Event of Default has occurred), Borrower shall allow, and cause each Credit Party to allow, Agent and the Lenders to visit and inspect any properties of a Credit Party, to examine and make abstracts or copies from any Credit Party's books, to conduct a collateral audit and analysis of its operations and the Collateral to verify the amount and age of the accounts, the identity and credit of the respective account debtors, to review the billing practices of the Credit Party and to discuss its respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. Borrower shall reimburse Agent and each Lender for all reasonable costs and expenses associated with such visits and inspections; provided, however, that Borrower shall be required to reimburse Agent and each Lender for such costs and expenses for no more than one (1) such visit and inspection per twelve (12) month period unless a Default or Event of Default has occurred during such period.

(d) Borrower shall, and shall cause each Credit Party to, deliver to Agent and each Lender, within five (5) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that would reasonably be expected to have a material effect on any of the Required Permits material to Borrower's business or otherwise on the operations of Borrower or any of its Subsidiaries (except that reporting related to Regulatory Required Permits and/or Regulatory Reporting Events shall be governed by Section 6.16).

6.3 Maintenance of Property. Borrower shall cause all equipment and other tangible personal property other than Inventory to be maintained and preserved in the same condition, repair and in working order as of the date hereof, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Borrower shall cause each Credit Party to keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between a Credit Party and its Account Debtors shall follow the Credit Party's customary practices as they exist at the Closing Date. Borrower shall promptly notify Agent of all returns, recoveries, disputes and claims that involve more than Two Hundred and Fifty Thousand Dollars (\$250,000) of Inventory collectively among all Credit Parties.

6.4 Taxes; Pensions. Borrower shall timely file and cause each Credit Party to timely file, all required tax returns and reports and, except to the extent subject to a Permitted Contest, timely pay, and cause each Credit Party to timely pay, all foreign, federal, state, and local Taxes, assessments, deposits and contributions owed, and shall deliver to Agent, on demand, appropriate certificates attesting to such payments. Borrower shall pay, and cause each Credit Party to pay, all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms. Each Credit Party and their ERISA Affiliates shall timely make all required contributions to each Pension Plan and shall maintain each "plan" (as defined by Section 3(3) of ERISA) in material compliance with the applicable provisions of ERISA, the Internal Revenue Code and other federal and state laws. Borrower shall give written notice to Agent and each Lender promptly (and in any event within ten (10) Business Days) upon Borrower becoming aware of any (i) Credit Party's or any ERISA Affiliate's failure to make any contribution required to be made with respect to any Pension Plan not having been timely made, (ii) notice of the PBGC's, any Credit Party's or any ERISA Affiliate's intention to terminate or to have a trustee appointed to administer any such Pension Plan, or (iii) complete or partial withdrawal by any Credit Party or any ERISA Affiliate from any Pension Plan.

6.5 Insurance. Borrower shall, and shall cause each Credit Party to, keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are satisfactory to Agent. All property policies shall have a lender's loss payable endorsement showing Agent as sole lender's loss payee and waive subrogation against Agent, and all liability policies shall show, or have endorsements showing, Agent as an additional insured. No other loss payees may be shown on the policies unless Agent shall otherwise consent in writing (except a secured party or equipment lessor may be named loss payee with respect to any asset on which it has a Permitted Lien). If required by Agent, all policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall endeavor to give Agent at least thirty (30) days' (ten (10) days' for non-payment of premium) notice before canceling, amending, or declining to renew its policy. At Agent's request, Borrower shall deliver copies of all such Credit Party insurance policies and evidence of all premium payments. If any Credit Party fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Agent, Agent may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Agent deems prudent.

6.6 Collateral Accounts. Borrower shall, and shall cause each Credit Party to, provide Agent five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution. In addition, for each Collateral Account that any Credit Party at any time maintains (and in connection with any such Collateral Account established after the Closing Date, prior to opening such Collateral Account), Borrower shall, and shall cause each Credit Party to, cause the applicable bank or financial institution at or with which any such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument or agreement with respect to such Collateral Account that (a) ensures the perfection and priority of Agent's Lien in such Collateral Account in accordance with the terms hereunder to the extent necessary in the applicable jurisdiction

in which the Collateral Account is located, (b) provides that, upon written notice from Agent, such bank or financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Collateral Account without further consent by the applicable Credit Party, and (c) may not be terminated without prior written consent of Agent (except by the applicable bank or financial institution upon prior written notice to Agent in accordance with terms reasonably satisfactory to Agent). The provisions of the previous sentence shall not apply to (i) the TD Cash Collateral Accounts and (ii) deposit accounts exclusively used for payroll, payroll taxes and, in Agent's discretion, other employee wage and benefit payments to or for the benefit of a Credit Party's employees and identified to Agent by Borrower as such; *provided*, however, that at all times Borrower shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

6.7 Notices of Material Agreements, Litigation and Defaults; Cooperation in Litigation.

(a) Borrower shall promptly (and in any event within the time periods specified below) provide written notice to Agent and each Lender of the following:

(i) Within three (3) Business Days of Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default;

(ii) Within three (3) Business Days of Borrower becoming aware of (or having reason to believe any of the following are pending or threatened in writing) any action, suit, proceeding or investigation against Borrower or any Credit Party which involves the possibility of any judgment or liability of more than One Hundred Thousand Dollars (\$100,000) or that could result in a Material Adverse Change, or which questions the validity of any of the Financing Documents, or the other documents required thereby or any action to be taken pursuant to any of the foregoing;

(iii) (A) Within three (3) Business Days of Borrower (1) executing and delivering any amendment, consent, waiver or other modification to any Material Agreement that is materially adverse to Borrower or that is adverse to Agent or any Lender or (2) receiving or delivering any notice of termination or default or similar notice in connection with any Material Agreement and (B) together with delivery of the next Compliance Certificate (included as an update to the **Disclosure Schedule** delivered therewith) the execution of any new Material Agreement and/or any new material amendment, consent, waiver or other modification to any Material Agreement not previously disclosed.

(b) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clause (a). From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

6.8 Creation/Acquisition of Subsidiaries. Borrower shall provide Agent with at least fifteen (15) Business Days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create or, to the extent permitted pursuant to this Agreement, acquire a new Subsidiary. Upon such creation or, to the extent permitted hereunder, acquisition of any Subsidiary, Borrower and such Subsidiary shall promptly (and in any event within fifteen (15) Business Days of such creation or acquisition) take all such action as may be reasonably required by Agent or the Required Lenders to cause each such Subsidiary to either, in the discretion of Agent, become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Financing Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on **Exhibit A** hereto); and Borrower shall grant and pledge to Agent, for the ratable benefit of the Lenders, a perfected security interest in the stock, units or other evidence of ownership of each

Subsidiary (the foregoing collectively, the “**Joinder Requirements**”); provided, that Borrower shall not be permitted to make any Investment in such Subsidiary until such time as Borrower has satisfied the Joinder Requirements.

6.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions solely for (a) transaction fees incurred in connection with the Financing Documents, (b) for working capital needs of Borrower and its Subsidiaries, and (c) any other Permitted Purpose specified in the Credit Facility Schedule for such Credit Facility. No portion of the proceeds of the Credit Extensions will be used for family, personal, agricultural or household use or to purchase Margin Stock.

6.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply in all material respects with all Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply in all material respects with each Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrower will provide Agent, within thirty (30) days after written demand therefor with a bond, letter of credit or similar financial assurance evidencing to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent’s determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment would reasonably be expected to result in a Material Adverse Change.

(c) If there is any conflict between this Section 6.10 and any environmental indemnity agreement which is a Financing Document, the environmental indemnity agreement shall govern and control.

6.11 Power of Attorney. Each of the officers of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for each Borrower (without requiring any of them to act as such) with full power of substitution to do the following: (a) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral (in each case, so long as no Default or Event of Default has occurred, other than Permitted Liens), or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (b) so long as Agent has provided not less than three (3) Business Days’ prior written notice to Borrower to perform the same and Borrower has failed to take such action, (i) execute in the name of any Person comprising Borrower any schedules, assignments, instruments, documents, and statements that Borrower is obligated to give Agent under this Agreement or that Agent or any Lender deems necessary to perfect or better perfect Agent’s security interest or Lien in any Collateral, (ii) do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce, protect or preserve any Collateral or its rights therein, including, but not limited to, to sign Borrower’s name on any invoice or bill of lading for any Account or drafts against Account Debtors; and (iii) after the occurrence and during the continuance of an Event of Default, (A) endorse the name of any Borrower upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrower; (B) make, settle, and adjust all claims under Borrower’s insurance policies; (C) take any action any Credit Party is required to take under this Agreement or any other Financing Document; (D) transfer the Collateral into the name of Agent or a third party as the Code permits; (E) exercise any rights and remedies described in this Agreement or the other Financing Documents; and (F) do such other and further acts and deeds in the name of Borrower that Agent may deem necessary or desirable to enforce its rights with regard to any Collateral.

6.12 Further Assurances. Borrower shall, and shall cause each Credit Party to, promptly execute any further instruments and take further action as Agent reasonably requests to perfect or better perfect or continue Agent's Lien in the Collateral or to effect the purposes of this Agreement or any other Financing Document.

6.13 Post-Closing Obligations. Borrower shall, and shall cause each Credit Party to, complete each of the post-closing obligations and/or deliver to Agent each of the documents, instruments, agreements and information listed on the **Post-Closing Obligations Schedule** attached hereto, on or before the date set forth for each such item thereon (as the same may be extended by Agent in writing in its sole discretion), each of which shall be completed or provided in form and substance satisfactory to Agent and the Lenders.

6.14 Disclosure Schedule Updates. Borrower shall, in the event of any information in the **Disclosure Schedule** becoming outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next Compliance Certificate required to be delivered under this Agreement after such event, a proposed update to the **Disclosure Schedule** correcting all outdated, inaccurate, incomplete or misleading information; provided, however, (i) with respect to any proposed updates to the **Disclosure Schedule** involving Permitted Liens, Permitted Indebtedness or Permitted Investments, Agent will replace the **Disclosure Schedule** attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Indebtedness or Permitted Investments and (ii) with respect to any proposed updates to the **Disclosure Schedule** involving other matters, Agent will replace the applicable portion of the **Disclosure Schedule** attached hereto with such proposed update upon Agent's approval thereof.

6.15 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 6.2(b), to the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, or (B) Borrower enters into or becomes bound by any Material License Agreement, or (C) there occurs any other material change to the information listed on the **Intangible Assets Schedule**, deliver to Agent an updated **Intangible Assets Schedule** reflecting such updated information.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications to the extent they are addressed below), Borrower shall promptly execute such intellectual property security agreements (which shall be filed in the United States Patent and Trademark Office or the Canada Copyright Office, as applicable) and other documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such property. If Borrower decides to register any copyrights or mask works in the United States Copyright Office or the Canada Copyright Office (of the Canadian Intellectual Property Office), Borrower shall: (x) provide Agent with at least fifteen (15) days prior written notice of Borrower's intent to register such copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office (excluding Exhibits thereto) or the application it intends to file with the Canada Copyright Office; (y) execute an intellectual property security agreement and such other documents and provide such other information and take such other actions as Agent may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Agent, for the ratable benefit of the Lenders, in the copyrights or mask works intended to be registered with the United States Copyright Office or the Canada Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office or the Canada Copyright Office contemporaneously with filing the copyright or mask work application(s) with the United States Copyright Office or the Canada Copyright Office, as applicable.

(c) Borrower shall (x) take such steps as Agent requests to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for all Registered Intellectual Property and Material License Agreements to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise be restricted or prohibited by Law or by the terms of any such Registered Intellectual Property or Material License Agreement, whether now existing or entered into in the future, and (y) use commercially reasonable efforts to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for Agent to have the ability

in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Agent's rights and remedies under this Agreement and the other Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all Registered Intellectual Property to be duly and properly registered, filed or issued in the appropriate office and jurisdictions for such registrations, filings or issuances, except where the failure to do so would not reasonably be expected to result in a Material Adverse Change. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any Material License Agreement or other agreement with respect to which Borrower is the licensee with respect to Intellectual Property that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or other property.

6.16 Regulatory Reporting and Covenants.

(a) Borrower shall notify Agent and each Lender promptly, and in any event within three (3) Business Days of receiving, becoming aware of or determining that, (each, a "Regulatory Reporting Event" and collectively, the "Regulatory Reporting Events"): (i) any Governmental Authority, specifically including the FDA is conducting or has conducted (A) if applicable, any investigation of Borrower's or its Subsidiaries' manufacturing facilities and processes for any Product (or any investigation of the facility of a contract manufacturer engaged by Borrower or its Subsidiaries in respect of a Product of which Borrower and/or its Subsidiaries are aware), which has disclosed any material deficiencies or violations of Laws and/or the Regulatory Required Permits related thereto or (B) an investigation or review of any Regulatory Required Permit (other than routine reviews in the Ordinary Course of Business associated with the renewal of a Regulatory Required Permit and which could not reasonably be expected to result in a Material Adverse Change), (ii) (A) any Governmental Authority has required that development, testing, and/or manufacturing of any Product should cease or (B) any development, testing, and/or manufacturing of any Product that is material to the business of the Credit Parties (taken as a whole) should cease for any reason, (iii) (A) if a Product has been approved for marketing and sale, (A) any Governmental Authority has required that any marketing or sales of such Product should cease or such Product should be withdrawn from the marketplace, or (B) with respect to any such Product that is material to the business of the Credit Parties (taken as a whole), the marketing and sale of such Product shall cease or such Product should be withdrawn from the marketplace for any reason, (iv) any Regulatory Required Permit has been revoked or withdrawn, (v) adverse clinical test results have occurred with respect to any Product to the extent that such results result in, or would reasonably be expected to result in a Material Adverse Change, (vi) any Product recalls or voluntary Product withdrawals from any market (other than with respect to discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) have occurred, or (vii) any significant failures in the manufacturing of any Product have occurred such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to Borrower therefor in any month shall decrease significantly with respect to the quantities of such Product and payments produced in the prior month. Borrower shall provide to Agent or any Lender such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any such Regulatory Reporting Event.

(b) Borrower shall, and shall cause each Credit Party to, obtain and, to the extent applicable, use commercially reasonable efforts to cause all third parties to obtain, all Regulatory Required Permits necessary for compliance in all material respects with Laws with respect to testing, manufacturing, developing, selling or marketing of Products and shall, and shall cause each Credit Party to, maintain and comply fully and completely in all respects with all such Regulatory Required Permits, the noncompliance with which would result in a Material Adverse Change. In the event Borrower or any Credit Party obtains any new Regulatory Required Permit or any information on the **Required Permits Schedule** becomes outdated, inaccurate, incomplete or misleading, Borrower shall, together with the next Compliance Certificate required to be delivered under this Agreement after such event, provide Agent with an updated **Required Permits Schedule** including such updated information.

(c) If, after the Closing Date, (i) Borrower determines to manufacture, sell, develop, test or market any new Product (by itself or through a third party), Borrower shall deliver prior written notice to Agent of such determination (which shall include a brief description of such Product) and, together with delivery of the next Compliance Certificate shall provide an updated **Intangible Assets Schedule, Products Schedule and Required Permits Schedule** (and copies of such Required Permits as Agent may request) reflecting any applicable updates related to such determination.

7. NEGATIVE COVENANTS

Borrower shall not do, nor shall it permit any Credit Party to do, any of the following without the prior written consent of Agent:

7.1 Dispositions. Convey, sell, abandon, lease, license, transfer, assign or otherwise dispose of (collectively, “**Transfer**”) all or any part of its business or property, except for (a) sales, transfers or dispositions of Inventory in the Ordinary Course of Business; (b) sales or abandonment of (i) worn-out or obsolete Equipment or (ii) other Equipment that is no longer used or useful in the business of Borrower with a fair salable value not to exceed Fifty Thousand Dollars (\$50,000) in the aggregate for all such Equipment; (c) to the extent they may constitute a Transfer, Permitted Liens; (d) to the extent they may constitute a Transfer, Permitted Investments; (e) Permitted Licenses; or (f) so long as no Event of Default has occurred and is continuing, Transfers to a Person that is a Borrower.

7.2 Changes in Business, Management, Ownership or Business Locations. (a) Engage in, or permit any of its Subsidiaries to engage in, any business other than the businesses currently engaged in by Borrower, such Credit Party or such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; (c) (i) have a change in senior management where a suitable permanent replacement, as approved by Borrower’s or such Credit Party’s board of directors, has not been named and hired by not later than ninety (90) days after such change unless (except in the case of the chief executive officer or the vice president finance) Borrower’s or such Credit Party’s board of directors determines, in its reasonable discretion and in good faith, such replacement unnecessary, or (ii) enter into any transaction or series of related transactions which would result in a Change in Control unless the agreements with respect to such transactions provide for, as a condition precedent to the consummation thereof, either (x) the indefeasible payment in full of the Obligations or (y) the consent of Agent and the Lenders; (d) add any new offices or business locations, or enter into any new leases with respect to existing offices or business locations without first delivering a fully-executed Access Agreement to Agent (except as otherwise provided below); (e) change its jurisdiction of organization; (f) change its organizational structure or type; (g) change its legal name (except where Agent has received fifteen (15) Business Days prior written notice thereof and prior to consummating any such change all actions reasonably required by Agent to ensure compliance of Credit Parties under this Agreement, including those to continue the perfection of its Liens, have been taken); (h) change any organizational number (if any) assigned by its jurisdiction of organization or (i) change any other of its organizational documents (other than a change in registered agent, or a change that could not adversely affect the rights of Agent or the Lenders hereunder, without the prior written consent of Agent. Notwithstanding subpart (d) above, provided that the applicable lease, or applicable law, does not grant to the landlord any Lien upon intangible assets of the tenant, subpart (d) shall not restrict leases for (i) such new or existing offices or business locations containing less than One Hundred Thousand Dollars (\$100,000) in Borrower’s assets or property and not containing Borrower’s Books, (ii) such new or existing offices or business locations containing in excess of \$100,000 and which is not Borrower’s corporate headquarters and, in any event, Borrower shall have used commercially reasonable efforts to obtain an Access Agreement with respect to such location and (iii) any new or existing business location constituting a warehouse, consignee or bailee location that does not contain any of Borrower’s Books and would not otherwise require an Access Agreement pursuant to the criteria set forth in Section 4.2(e).

7.3 Mergers or Acquisitions. Merge or consolidate with any other Person, or acquire all or substantially all of the capital stock or property of or make any Investment in another Person; *provided, however*, that a Subsidiary of Borrower may merge or consolidate into another Subsidiary that is a Borrower, so long as (a) Borrower has provided Agent with prior written notice of such transaction, (b) a Person already comprising the Borrower shall be the surviving legal entity, (c) Borrower’s tangible net worth is not thereby reduced, (d) no Event

of Default has occurred and is continuing prior thereto or arises as a result therefrom, and (e) Borrower shall be in compliance with the covenants set forth in this Agreement both before and after giving effect to such transaction.

7.4 Indebtedness. (a) Create, incur, assume, or be liable for any Indebtedness other than Permitted Indebtedness or (b) purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness (other than with respect to the Obligations as described in Section 2.3) prior to its scheduled maturity.

7.5 Encumbrance. (a) Create, incur, allow, or suffer any Lien on any of its property, except for Permitted Liens, (b) permit any Collateral to fail to be subject to a first priority security interest in favor of Agent, for the ratable benefit of the Lenders, except for Permitted Liens that may have priority by operation of applicable Law or by the terms of a written intercreditor or subordination agreement entered into by Agent, or (c) enter into any agreement, document, instrument or other arrangement (except with or in favor of Agent) with any Person after the Closing Date which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning by way of security, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Collateral or Intellectual Property, except (i) as is otherwise permitted in the definition of "Permitted Liens" herein and (ii) for immaterial agreements containing customary provisions which prohibit or have the effect of prohibiting Borrower or such Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering such immaterial agreement, *provided* that such prohibition (x) applies only to such immaterial agreement and (y) is enforceable under applicable law (including without limitation Sections 9-406, 9-407 and 9-408 of the UCC).

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account, except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments; Margin Stock. (a) Pay any dividends (other than (i) dividends payable solely in common stock or (ii) dividends paid by any Subsidiary of a Borrower to a Borrower) or make any distribution or payment with respect to or redeem, retire or purchase or repurchase any of its equity interests (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar plans), or (b) directly or indirectly make any Investment (including, without limitation, any additional Investment in any Subsidiary) other than Permitted Investments. Without limiting the foregoing, Borrower shall not, and shall not permit any of its Subsidiaries or any Credit Party to, purchase or carry Margin Stock.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Credit Party, except for (a) transactions that are in the Ordinary Course of Business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) transactions with Subsidiaries that are designated as a Borrower hereunder and that are not otherwise prohibited by Article 7 of this Agreement, and (c) transactions permitted by Section 7.7 of this Agreement.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except to the extent expressly permitted to be made pursuant to the terms of the Subordination Agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt other than as may be expressly permitted pursuant to the terms of any applicable Subordination Agreement to which such Subordinated Debt is subject.

7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended or undertake as one of its important activities extending credit to purchase or carry Margin Stock, or use the proceeds of any Credit Extension for that purpose; (i) fail, or permit any ERISA Affiliate to fail, to meet "minimum funding standards" (as defined in and subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA), whether or not waived, (ii) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) a "reportable event" as defined in and subject to Section 4043(c) of ERISA (or the regulations issued thereunder) (other than an event for which the 30-day notice requirement is waived) to occur, (iii) engage in any "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Internal Revenue Code that could result in liability in

excess of One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate or that would reasonably be expected to result in a Material Adverse Change; (iv) fail to comply with the Federal Fair Labor Standards Act that could result in liability in excess of One Hundred Fifty Thousand Dollars (\$150,000) in the aggregate or that would reasonably be expected to result in a Material Adverse Change; (v) permit (with respect to any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof) the withdrawal from participation in any Pension Plan or Canadian DB Plan except as would not reasonably be expected to result in a Material Adverse Change, or (vi) incur, or permit any Credit Party, any Subsidiary of any Credit Party or any ERISA Affiliate thereof to incur, any liability under Title IV of ERISA (other than for PBGC premiums due but not delinquent under Section 4007 of ERISA). Neither the Borrower nor any Credit Party shall establish a Canadian DB Plan without the prior written consent of Agent or the Lenders.

7.11 Amendments to Organization Documents and Material Agreements. Amend, modify or waive any provision of (a) any Material Agreement in a manner that is materially adverse to Agent or any Lender, that pertains to rights to assign or grant a security interest in such Material Agreement or that could or could reasonably be expected to result in a Material Adverse Change, or (b) any of its organizational documents (other than a change in registered agents, any change expressly permitted by Section 7.2 or a change that could not adversely affect the rights of Agent or Lenders hereunder), in each case, without the prior written consent of Agent. Borrower shall provide to Agent copies of all material amendments, waivers and modifications of any Material Agreement and all amendments, waivers or modifications of any organizational documents.

7.12 Compliance with Anti-Terrorism Laws.

(a) Directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower shall immediately notify Agent if Borrower has knowledge that Borrower or any Subsidiary or Affiliate is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Borrower will not, nor will Borrower permit any Subsidiary or Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law. Agent hereby notifies Borrower that pursuant to the requirements of Anti-Terrorism Laws, and Agent's policies and practices, Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and its principals, which information includes the name and address of Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws.

(b) Borrower acknowledges that, pursuant to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" Laws, whether within Canada or elsewhere (collectively, including any guidelines or orders thereunder, "AML Legislation"), Lenders and Agent may be required to obtain, verify and record information regarding the Credit Parties, their respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Credit Party, and the transactions contemplated hereby. Credit Parties shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by any Lender or Agent, or any prospective permitted assign or participant of a Lender or Agent, in order to comply with any applicable AML Legislation, whether now or hereafter in existence. If Agent has ascertained the identity of any Credit Party or any authorized signatories of any Credit Party for the purposes of applicable AML Legislation, then Agent:

(i) shall be deemed to have done so as an agent for each Lender, and this Agreement shall constitute a "written agreement" in such regard between each Lender and Agent within the meaning of applicable AML Legislation; and

(ii) shall provide to each Lender copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Lender agrees that Agent has no obligation to ascertain the identity of any Credit Party or any authorized signatories thereof on behalf of any Lender, or to confirm the completeness or accuracy of any information it obtains from Borrower or any such authorized signatory in doing so.

(c) Borrower shall not, nor shall it permit any of its Subsidiaries to, directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the Corruption of Foreign Public Officials Act (Canada), the FCPA or other similar legislation in other jurisdictions. Each Credit Party shall conduct its businesses in compliance with applicable anti-corruption laws.

8. RESERVED

9. RESERVED

10. EVENTS OF DEFAULT

10.1 Events of Default. The occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an “**Event of Default**” and Credit Parties shall thereupon be in default under this Agreement and each of the other Financing Documents:

(a) Borrower fails to (i) make any payment of principal or interest on any Credit Extension on its due date, or (ii) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 10.2 hereof);

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and which occurrences thereby constitute immediate Events of Default) and, to the extent appropriate action can be taken to remedy, such default is not remedied by the Credit Party or waived by Agent within ten (10) days after the earlier of (i) the date of receipt by any Borrower of notice from Agent or the Required Lenders of such default, or (ii) the date an officer of such Credit Party becomes aware, or through the exercise of reasonable diligence should have become aware, of such default;

(c) any Credit Party defaults in the performance of or compliance with any term contained in Section 6.2, 6.4, 6.6, 6.7(a), 6.8, 6.9, 6.13, 6.15 or 6.16, or Article 7;

(d) any representation, warranty, certification or statement made by any Credit Party or any other Person acting for or on behalf of a Credit Party (i) in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document, or (ii) to induce Agent and/or Lenders to enter into this Agreement or any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(e) (i) any Credit Party defaults under or breaches any Material Agreement (after any applicable grace period contained therein), or a Material Agreement shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Agreement to which it is a party, in each case which would reasonably be expected to result in a Material Adverse Change, (ii) (A) any Credit Party fails to make (after any applicable grace period) any payment when due (whether due because of scheduled maturity, required prepayment provisions, acceleration, demand or otherwise) on any Indebtedness (other than the Obligations) of such Credit Party or such Subsidiary having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all

creditors under any combined or syndicated credit arrangement) of more than Fifty Thousand Dollars (\$50,000) (“**Material Indebtedness**”), (B) any other event shall occur or condition shall exist under any contractual obligation relating to any such Material Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of (without regard to any subordination terms with respect thereto), the maturity of such Material Indebtedness or (C) any such Material Indebtedness shall become or be declared to be due and payable, or be required to be prepaid, redeemed, defeased or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof, (iii) any Credit Party defaults (beyond any applicable grace period) under any obligation for payments due or otherwise under any lease agreement for such Credit Party’s principal place of business or any place of business that meets the criteria for the requirement of an Access Agreement under Section 7.2 or for which an Access Agreement exists or was required to be delivered, and the effect of such default is to cause the termination of such lease, (iv) the occurrence of any breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations, or the occurrence of any event requiring the prepayment of any Subordinated Debt, or the delivery of any notice with respect to any Subordinated Debt or pursuant to any Subordination Agreement that triggers the start of any standstill or similar period under any Subordination Agreement, or (v) any Borrower makes any payment on account of any Indebtedness that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(f) (i) any Credit Party shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally, shall make a general assignment for the benefit of creditors, or shall cease doing business as a going concern, (ii) any proceeding shall be instituted by or against any Credit Party seeking to adjudicate it a bankrupt or insolvent or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order (including without limitation any petition or application being filed or made or other proceeding instituted against such Credit Party seeking a receiving order under the *Bankruptcy and Insolvency Act* (Canada) or any analogous procedure or step is taken in any other jurisdiction), in each case under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, other similar official or other official with similar powers, in each case for it or for any substantial part of its property and, in the case of any such proceedings instituted against (but not by or with the consent of) such Credit Party, either such proceedings shall remain undismissed or unstayed for a period of thirty (30) days or more or any action sought in such proceedings shall occur, (iii) any Credit Party shall take any corporate or similar action or any other action to authorize any action described in clause (f) or (ii) above or (iv) any Canadian Credit Party shall commit an act of bankruptcy under the *Bankruptcy and Insolvency Act* (Canada), or makes an assignment of its property for the general benefit of its creditors under such Act, or makes a proposal (or files a notice of its intention to do so) under such Act or any analogous procedure or step is taken in any other jurisdiction;

(g) (i) the service of process seeking to attach, execute or levy upon, seize or confiscate any Collateral Account, any Intellectual Property, or any funds of any Credit Party on deposit with Agent, any Lender or any Affiliate of Agent or any Lender, or (ii) a notice of lien, levy, or assessment is filed against any assets of a Credit Party by any government agency, and the same under subclauses (i) and (ii) hereof are not discharged or stayed (whether through the posting of a bond or otherwise) prior to the earlier to occur of ten (10) days after the occurrence thereof or such action becoming effective;

(h) (i) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business, (ii) the institution by any Governmental Authority of criminal proceedings against any Credit Party, or (iii) one or more judgments or orders for the payment of money (not paid or fully covered by insurance and as to which the relevant insurance company has acknowledged coverage in writing) aggregating in excess of One Hundred Thousand Dollars (\$100,000) shall be rendered against any or all Credit Parties and either (A) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (B) there shall be any period of ten (10) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect,

(i) any Lien created by any of the Financing Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert; any provision of any Financing Document shall fail to be valid and binding on, or enforceable against, a Credit Party, or any Credit Party shall so assert;

(j) (i) a Change in Control occurs or (ii) any Credit Party or direct or indirect equity owner in a Credit Party shall enter into an agreement which contemplates a Change in Control (unless such agreement is either (A) non-binding on such Credit Party or (B) provides for, as a condition precedent to the consummation of such agreement, either (x) the indefeasible payment in full in cash of all Obligations or (y) the consent of Agent and the Lenders);

(k) any Required Permit shall have been (i) revoked, rescinded, suspended, modified in a materially adverse manner or not renewed in the Ordinary Course of Business for a full term, or (ii) subject to any decision by a Governmental Authority that designates a hearing with respect to any applications for renewal of any of such Required Permit or that could result in the Governmental Authority taking any of the actions described in clause (i) above, and such decision or such revocation, rescission, suspension, modification or non-renewal has, or would reasonably be expected to result in, a Material Adverse Change;

(l) (i) The voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category which would reasonably be expected to result in a Material Adverse Change, (ii) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, results in, or would reasonably be expected to result in, a Material Adverse Change, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by DEA, FDA, or any other Governmental Authority which results in, or would reasonably be expected to result in, a Material Adverse Change, or (iv) the occurrence of confirmed adverse test results in connection with a Product which would result in a Material Adverse Change;

(m) if any Borrower is or becomes an entity whose equity is registered with the SEC, and/or is publicly traded on and/or registered with a public securities exchange, such Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange; or

(n) the occurrence of any fact, event or circumstance that would reasonably be expected to result in a Material Adverse Change.

Notwithstanding the foregoing, if a Credit Party fails to comply with any same provision of this Agreement two (2) times in any twelve (12) month period and Agent has given to any Borrower in connection with each such failure any notice to which Borrower would be entitled under this Section 10.1 before such failure could become an Event of Default, then all subsequent failures by a Credit Party to comply with such provision of this Agreement shall effect an immediate Event of Default (without the expiration of any applicable cure period) with respect to all subsequent failures by a Credit Party to comply with such provision of this Agreement, and Agent thereupon may exercise any remedy set forth in this Article 10 without affording Borrower any opportunity to cure such Event of Default.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

10.2 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Agent may, and at the written direction of any Lender shall, without notice or demand, do any or all of the following: (i)

deliver notice of the Event of Default to Borrower, (ii) by notice to any Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 10.1(f) occurs all Obligations shall be immediately due and payable without any action by Agent or the Lenders), or (iii) by notice to any Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between any Credit Party and Agent and/or the Lenders (but if an Event of Default described in Section 10.1(f) occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Agent and/or the Lenders shall be immediately terminated without any action by Agent or the Lenders).

(b) Without limiting the rights of Agent and the Lenders set forth in Section 10.2(a) above, upon the occurrence and during the continuance of an Event of Default, Agent shall have the right, without notice or demand, to do any or all of the following:

(i) with or without legal process, enter any premises where the Collateral may be and take possession of and remove the Collateral from the premises or store it on the premises, and foreclose upon and/or sell, lease or liquidate, the Collateral, in whole or in part;

(ii) apply to the Obligations (A) any balances and deposits of any Credit Party that Agent or any Lender or any Affiliate of Agent or a Lender holds or controls, or (B) any amount held or controlled by Agent or any Lender or any Affiliate of Agent or a Lender owing to or for the credit or the account of any Credit Party;

(iii) settle, compromise or adjust and grant releases with respect to disputes and claims directly with Account Debtors for amounts on terms and in any order that Agent considers advisable, notify any Person owing any Credit Party money of Agent's security interest in such funds, and verify the amount of such Account;

(iv) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Agent requests and make it available as Agent designates. Agent may also render any or all of the Collateral unusable at a Credit Party's premises and may dispose of such Collateral on such premises without liability for rent or costs. Borrower grants Agent a license to enter and occupy any of its premises, without charge, to exercise any of Agent's rights or remedies;

(v) pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred;

(vi) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. In connection with Agent's exercise of its rights under this Article 10, Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral (and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof) and Borrower's rights under all licenses and all franchise agreements shall be deemed to inure to Agent for the benefit of the Lenders;

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

(viii) demand and receive possession of the Books of Borrower and the other Credit Parties; and

(ix) exercise all other rights and remedies available to Agent under the Financing Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof) and the Personal Property Security Act.

10.3 Notices. Any notice that Agent is required to give to a Credit Party under the UCC or the Personal Property Security Act of the time and place of any public sale or the time after which any private sale or other intended disposition of the Collateral is to be made shall be deemed to constitute reasonable notice if such notice is given in accordance with this Agreement at least five (5) days prior to such action.

10.4 Protective Payments. If any Credit Party fails to pay or perform any covenant or obligation under this Agreement or any other Financing Document, Agent may pay or perform such covenant or obligation, and all amounts so paid by Agent are Protective Advances and immediately due and payable, bearing interest at the then highest applicable rate for the Credit Facilities hereunder, and secured by the Collateral, provided that, so long as no Event of Default has occurred and is continuing, Agent has provided not less than three (3) Business Days' prior written notice to Borrower to pay or perform same and Borrower has failed to take such action. No such payments or performance by Agent shall be construed as an agreement to make similar payments or performance in the future or constitute Agent's waiver of any Event of Default.

10.5 Liability for Collateral No Waiver; Remedies Cumulative. So long as Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Agent and the Lenders, Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral. Agent's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Financing Document shall not waive, affect, or diminish any right of Agent thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Agent and then is only effective for the specific instance and purpose for which it is given. Agent's rights and remedies under this Agreement and the other Financing Documents are cumulative. Agent has all rights and remedies provided under the Code, the Personal Property Security Act, by Law, or in equity. Agent's exercise of one right or remedy is not an election, and Agent's waiver of any Event of Default is not a continuing waiver. Agent's delay in exercising any remedy is not a waiver, election, or acquiescence.

10.6 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (i) Borrower, for itself and the other Credit Parties, irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Agent from or on behalf of Borrower of all or any part of the Obligations, and, as between Borrower and the Credit Parties on the one hand and Agent and the Lenders on the other, Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Agent may deem advisable notwithstanding any previous application by Agent, and (ii) unless Agent and the Lenders shall agree otherwise, the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: *first*, to the Protective Advances; *second*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); *third*, to the principal amount of the Obligations outstanding; and *fourth*, to any other indebtedness or obligations of the Credit Parties owing to Agent or any Lender under the Financing Documents. Borrower shall remain fully liable for any deficiency. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. Unless Agent and the Lenders shall agree otherwise, in carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category.

10.7 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment,

dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents and hereby ratifies and confirms whatever Agent or the Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's entry upon the premises of a Borrower, the taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by any Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Credit Facilities or to any subsequent disbursement of Credit Extensions, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future Credit Extensions and Agent may at any time after such acquiescence require Borrower to comply with all such requirements. Any forbearance by Agent or a Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Credit Facilities, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Financing Documents or as a reinstatement of the Obligations or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Obligations, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and the Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or the Lenders shall remain in full force and effect until Agent or the Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrower and the Financing Documents and other security instruments or agreements securing the Obligations have been foreclosed, sold and/or otherwise realized upon in satisfaction of the Obligations.

(e) Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrower's obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrower's obligations under the Financing Documents. To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any

equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or the Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

10.8 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and the Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section 10.8 as if this Section 10.8 were a part of each Financing Document executed by such Credit Party.

10.9 Other Currency. Without limiting Section 2.6(c) or any other provision of this Agreement, to the extent permitted by applicable Law, the obligations of any of the Credit Parties in respect of any amount due under this Agreement shall, notwithstanding any payment in any other currency (the "**Other Currency**") (whether pursuant to a judgment or otherwise), be discharged only to the extent of the amount in the currency in which it is due (the "**Agreed Currency**") that the Agent or the Lenders may, in accordance with normal banking procedures, purchase with the sum paid in the Other Currency (after any premium and costs of exchange) on the Business Day immediately after the day on which the Agent or any Lender receives the payment. If the amount of the Agreed Currency that may be so purchased for any reason falls short of the amount originally due, such Credit Party shall pay all additions amounts, in the Agreed Currency, as may be necessary to compensate for the shortfall. Any obligation of a Credit Party not discharged by that payment shall, to the extent permitted by applicable law, be due as a separate and independent obligation and, until discharged as provided in this Section 10.9, continue in full force and effect.

11. NOTICES

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

If to Borrower:

Impopharma Inc.
255 Spinnaker Way, Unit 6
Concord, Ontario L4K 4J1 Canada
Attention: Christine Mundkur
Fax: (905) 760-0235
E-Mail: cmundkur@impopharma.com

With a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2 Canada
Attn: Gayle Noble
Phone: (514) 397-3205
Fax: (514) 397-3605
Email: gnoble@stikeman.com

If to Agent or to MidCap (or any of its Affiliates or Approved Funds) as a Lender:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Account Manager for Impopharma transaction
Facsimile: 301-941-1450
Email: notices@midcapfinancial.com

With a copy to:

MidCap Financial Trust
c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Ave, Suite 200
Bethesda, MD 20814
Attn: Legal
Facsimile: 301-941-1450
Email: legalnotices@midcapfinancial.com

If to any Lender other than MidCap: at the address set forth in the signature pages to this Agreement or provided as a notice address for such in connection with any assignment hereunder.

12. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

12.1 THIS AGREEMENT, EACH SECURED PROMISSORY NOTE AND EACH OTHER FINANCING DOCUMENT (EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), AND THE RIGHTS, REMEDIES AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT OR SUCH FINANCING DOCUMENT (EXCLUDING THOSE FINANCING DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION), THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES AND ALL OTHER MATTERS RELATING HERETO, THERETO OR ARISING THEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. NOTWITHSTANDING THE FOREGOING, AGENT AND THE LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND THE LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12.1) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST BORROWER OR ITS PROPERTY. BORROWER EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF MARYLAND AND ANY SUCH OTHER JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND BORROWER HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED

UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. BORROWER HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS SET FORTH IN ARTICLE 11 OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF BORROWER'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

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

12.3 Borrower, Agent and each Lender agree that each Credit Extension (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland.

12.4 **CONFESSION OF JUDGMENT.** UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, EACH BORROWER AUTHORIZES ANY ATTORNEY ADMITTED TO PRACTICE BEFORE ANY COURT OF RECORD IN THE UNITED STATES OR THE CLERK OF SUCH COURT TO APPEAR ON BEHALF OF SUCH BORROWER IN ANY COURT IN ONE OR MORE PROCEEDINGS, OR BEFORE ANY CLERK THEREOF OR PROTHONOTARY OR OTHER COURT OFFICIAL, AND TO CONFESS JUDGMENT AGAINST BORROWER IN FAVOR OF AGENT (FOR THE BENEFIT OF ALL LENDERS) IN THE FULL AMOUNT DUE ON THIS AGREEMENT (INCLUDING PRINCIPAL, ACCRUED INTEREST AND ANY AND ALL CHARGES, FEES AND COSTS) PLUS ATTORNEYS' FEES EQUAL TO FIFTEEN PERCENT (15%) OF THE AMOUNT DUE (EXCEPT THAT AGENT SHALL NOT SEEK TO COLLECT AN AMOUNT IN EXCESS OF ITS ACTUAL ATTORNEYS' FEES), PLUS COURT COSTS, ALL WITHOUT PRIOR NOTICE OR OPPORTUNITY OF SUCH BORROWER FOR PRIOR HEARING. EACH BORROWER AGREES AND CONSENTS THAT VENUE AND JURISDICTION SHALL BE PROPER IN THE CIRCUIT COURT OF ANY COUNTY OF THE STATE OF MARYLAND. THE AUTHORITY AND POWER TO APPEAR FOR AND ENTER JUDGMENT AGAINST A BORROWER SHALL NOT BE EXHAUSTED BY ONE OR MORE EXERCISES THEREOF, OR BY ANY IMPERFECT EXERCISE THEREOF, AND SHALL NOT BE EXTINGUISHED BY ANY JUDGMENT ENTERED PURSUANT THERETO; SUCH AUTHORITY AND POWER MAY BE EXERCISED ON ONE OR MORE OCCASIONS FROM TIME TO TIME, IN THE SAME OR DIFFERENT JURISDICTIONS, AS OFTEN AS AGENT SHALL DEEM NECESSARY, CONVENIENT, OR PROPER.

13. GENERAL PROVISIONS

13.1 Successors and Assigns.

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Agent's prior written consent (which may be granted or withheld in Agent's discretion). Any Lender may at any time assign to one or more Eligible Assignees all or any portion of such Lender's Applicable Commitment and/or Credit Extensions, together with all related obligations of such Lender hereunder. Borrower and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Agent shall have received and accepted an effective assignment agreement in form and substance acceptable to Agent, executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Agent reasonably shall require. Notwithstanding anything set forth in this Agreement to the contrary, any Lender may at any time pledge or assign a security interest in all or

any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided, however*, that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto. If requested by Agent, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of an Applicable Commitment or Credit Extension to an assignee hereunder, (ii) make Borrower's management available to meet with Agent and prospective participants and assignees of Applicable Commitments or Credit Extensions and (iii) assist Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of an Applicable Commitment or Credit Extension reasonably may request.

(b) From and after the date on which the conditions described above have been met, (i) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such assignment agreement, shall have the rights and obligations of a Lender hereunder, and (ii) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such assignment agreement, shall be released from its rights and obligations hereunder (other than those that survive termination). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective assignment agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) secured notes in the aggregate principal amount of the Eligible Assignee's Credit Extensions or Applicable Commitments (and, as applicable, secured promissory notes in the principal amount of that portion of the principal amount of the Credit Extensions or Applicable Commitments retained by the assigning Lender).

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at its offices located in Bethesda, Maryland a copy of each assignment agreement delivered to it and a Register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount (and stated interest) of the Credit Extensions owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest error, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "**Participant Register**"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; provided, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(d) Notwithstanding anything to the contrary contained in this Agreement, the Credit Extensions (including any Secured Promissory Notes evidencing such Credit Extensions) are registered obligations, the right, title and interest of the Lenders and their assignees in and to such Credit Extensions shall be transferable only upon notation of such transfer in the Register and no assignment thereof shall be effective until recorded therein. This Agreement shall be construed so that the Credit Extensions are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and Section 5f.103-1(c) of the United States Treasury Regulations.

13.2 Indemnification.

(a) Borrower hereby agrees to promptly pay (i) (A) all costs and expenses of Agent (including, without limitation, the costs, expenses and reasonable fees of counsel to, and independent appraisers and consultants retained by, Agent) in connection with the examination, review, due diligence investigation,

documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, and in connection with the continued administration of the Financing Documents including (1) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (2) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, Personal Property Security Act searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons), and (B) costs and expenses of Agent in connection with the performance by Agent of its rights and remedies under the Financing Documents; (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the Credit Extensions to be made hereunder; and (v) all costs and expenses incurred by Agent or the Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or the Lenders are a party thereto. If Agent or any Lender uses in-house counsel for any of these purposes, Borrower further agrees that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed.

(b) Borrower hereby agrees to indemnify, pay and hold harmless Agent and the Lenders and the officers, directors, employees, trustees, agents, investment advisors, collateral managers, servicers, and counsel of Agent and the Lenders (collectively called the "Indemnitees") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the disbursements and reasonable fees of counsel for such Indemnitee) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Agent or the Lenders) asserting any right to payment for the transactions contemplated hereby, which may be imposed on, incurred by or asserted against such Indemnitee as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the Credit Facilities, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence may be unenforceable, Borrower shall contribute the maximum portion which it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of all such Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrower under this Section 13.2 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO ANY CREDIT PARTY OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

13.3 Time of Essence. Time is of the essence for the payment and performance of the Obligations in this Agreement.

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

13.5 Correction of Financing Documents. Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Financing Documents consistent with the agreement of the parties.

13.6 Integration. This Agreement and the other Financing Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Financing Documents merge into this Agreement and the Financing Documents.

13.7 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement. Delivery of an executed signature page of this Agreement by facsimile transmission or electronic transmission shall be as effective as delivery of a manually executed counterpart hereof.

13.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 13.2 to indemnify each Lender and Agent shall survive until the statute of limitations with respect to such claim or cause of action shall have run. All powers of attorney and appointments of Agent or any Lender as Borrower's attorney in fact hereunder, and all of Agent's and Lenders' rights and powers in respect thereof, are coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) have been fully repaid and performed and Agent's and the Lenders' obligation to provide Credit Extensions terminates.

13.9 Confidentiality. In handling any confidential information of Borrower, each of the Lenders and Agent shall use all reasonable efforts to maintain, in accordance with its customary practices, the confidentiality of information obtained by it pursuant to any Financing Document and designated in writing by any Credit Party as confidential, but disclosure of information may be made: (a) to the Lenders' and Agent's Subsidiaries or Affiliates; (b) to prospective permitted transferees and participants; *provided* that any such Persons are bound by customary obligations of confidentiality; (c) as required by Law, regulation, subpoena, order or other legal, administrative, governmental or regulatory request; (d) to regulators or as otherwise required in connection with an examination or audit, or to any nationally recognized rating agency; (e) as Agent or any Lender considers appropriate in exercising remedies under the Financing Documents; (f) to financing sources that are advised of the confidential nature of such information and are instructed to keep such information confidential; (g) to third party service providers of the Lenders and/or Agent so long as such service providers are bound to such Lender or Agent by obligations of confidentiality; (h) to the extent necessary or customary for inclusion in league table measurements; and (i) in connection with any litigation or other proceeding to which such Lender or Agent or any of their Affiliates is a party or bound, or to the extent necessary to respond to public statements or disclosures by Credit Parties or their Affiliates referring to a Lender or Agent or any of their Affiliates. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Agent's possession when disclosed to the Lenders and/or Agent, or becomes part of the public domain after disclosure to the Lenders and/or Agent; or (ii) is disclosed to the Lenders and/or Agent by a third party, if the Lenders and/or Agent does not know that the third party is prohibited from disclosing the information. Agent and/or Lenders may use confidential information for the development of client databases, reporting purposes, and market analysis, so long as Agent and/or Lenders, as applicable, do not disclose Borrower's identity or the identity of any Person associated with Borrower unless otherwise permitted by this Agreement. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 13.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 13.9.

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

13.11 Publicity. Borrower will not directly or indirectly publish, disclose or otherwise use in any public disclosure, advertising material, promotional material, press release or interview, any reference to the name, logo or any trademark of Agent or any Lender or any of their Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except as required by applicable Law, subpoena or judicial or similar order, in which case Borrower shall endeavor to give Agent prior written notice of such publication or other disclosure. Each Lender and Borrower hereby authorizes each Lender to publish the name of such Lender and Borrower, the existence of the financing arrangements referenced under this Agreement, the primary purpose and/or structure of those arrangements, the amount of credit extended under each facility, the title and role of each party to this Agreement, and the total amount of the financing evidenced hereby in any "tombstone", comparable advertisement or press release which such Lender elects to submit for publication. In addition, each Lender and Borrower agrees that each Lender may provide lending industry trade organizations with information necessary and customary for inclusion in league table measurements after the Closing Date. With respect to any of the foregoing, such authorization shall be subject to such Lender providing Borrower and the other Lenders with an opportunity to review and confer with such Lender regarding, and approve, the contents of any such tombstone, advertisement or information, as applicable, prior to its initial submission for publication, but subsequent publications of the same tombstone, advertisement or information shall not require Borrower's approval.

13.12 No Strict Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

13.13 Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or the Lenders with respect to any matter that is the subject of this Agreement or the other Financing Documents may be granted or withheld by Agent and the Lenders in their sole and absolute discretion and credit judgment.

13.14 Amendments; Required Lenders; Inter-Lender Matters.

(a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document, no approval or consent thereunder, or any consent to any departure by Borrower therefrom (in each case, other than amendments, waivers, approvals or consents deemed ministerial by Agent), shall in any event be effective unless the same shall be in writing and signed by Borrower, Agent and Required Lenders. Except as set forth in clause (b) below, all such amendments, modifications, terminations or waivers requiring the consent of the "Lenders" shall require the written consent of Required Lenders.

(b) No amendment, modification, termination or waiver of any provision of this Agreement or any other Financing Document shall, unless in writing and signed by Agent and by each Lender directly affected thereby: (i) increase or decrease the Applicable Commitment of any Lender (which shall be deemed to affect all Lenders), (ii) reduce the principal of or rate of interest on any Obligation or the amount of any fees payable hereunder, (iii) postpone the date fixed for or waive any payment of principal of or interest on any Credit Extension, or any fees or reimbursement obligation hereunder, (iv) release all or substantially all of the

Collateral, or consent to a transfer of any of the Intellectual Property, in each case, except as otherwise expressly permitted in the Financing Documents (which shall be deemed to affect all Lenders), (v) subordinate the lien granted in favor of Agent securing the Obligations (which shall be deemed to affect all Lenders, except as otherwise provided below), (vi) release a Credit Party from, or consent to a Credit Party's assignment or delegation of, such Credit Party's obligations hereunder and under the other Financing Documents or any Guarantor from its guaranty of the Obligations (which shall be deemed to affect all Lenders) or (vii) amend, modify, terminate or waive this Section 13.14(b) or the definition of "Required Lenders" or "Pro Rata Share" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the consent of each Lender. For purposes of the foregoing, no Lender shall be deemed affected by (i) waiver of the imposition of the Default Rate or imposition of the Default Rate to only a portion of the Obligations, (ii) waiver of the accrual of late charges, (iii) waiver of any fee solely payable to Agent under the Financing Documents, (iv) subordination of a lien granted in favor of Agent provided such subordination is limited to equipment being financed by a third party providing Permitted Indebtedness. Notwithstanding any provision in this Section 13.14 to the contrary, no amendment, modification, termination or waiver affecting or modifying the rights or obligations of Agent hereunder shall be effective unless signed by Agent and Required Lenders

(c) Agent shall not grant its written consent to any deviation or departure by Borrower or any Credit Party from the provisions of Article 7 without the prior written consent of the Required Lenders. Required Lenders shall have the right to direct Agent to take any action described in Section 10.2(b). Upon the occurrence of any Event of Default, Agent shall have the right to exercise any and all remedies referenced in Section 10.2 without the written consent of Required Lenders following the occurrence of an "Exigent Circumstance" (as defined below). All matters requiring the satisfaction or acceptance of Agent in the definition of Subordinated Debt shall further require the satisfaction and acceptance of each Required Lender. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. As used in this Section, "Exigent Circumstance" means any event or circumstance that, in the reasonable judgment of Agent, imminently threatens the ability of Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Agent, could result in a material diminution in value of the Collateral.

13.15 Borrower Liability. If there is more than one entity comprising Borrower, then (a) any Borrower may, acting singly, request Credit Extensions hereunder, (b) each Borrower hereby appoints the other as agent for the other for all purposes hereunder, including with respect to requesting Credit Extensions hereunder, (c) each Borrower shall be jointly and severally obligated to pay and perform all obligations under the Financing Documents, including, but not limited to, the obligation to repay all Credit Extensions made hereunder and all other Obligations, regardless of which Borrower actually receives said Credit Extensions, as if each Borrower directly received all Credit Extensions, and (d) each Borrower waives (1) any suretyship defenses available to it under the Code or any other applicable law, and (2) any right to require the Lenders or Agent to: (A) proceed against any Borrower or any other person; (B) proceed against or exhaust any security; or (C) pursue any other remedy. The Lenders or Agent may exercise or not exercise any right or remedy they have against any Credit Party or any security (including the right to foreclose by judicial or non-judicial sale) without affecting any other Credit Party's liability or any Lien against any other Credit Party's assets. Notwithstanding any other provision of this Agreement or other related document, until the indefeasible payment in cash in full of the Obligations (other than inchoate indemnity obligations for which no claim has yet been made) and termination of the Applicable Commitments, each Borrower irrevocably waives all rights that it may have at law or in equity (including, without limitation, any law subrogating Borrower to the rights of the Lenders and Agent under this Agreement) to seek contribution, indemnification or any other form of reimbursement from any other Credit Party, or any other Person now or hereafter primarily or secondarily liable for any of the Obligations, for any payment made by any Credit Party with respect to the Obligations in connection with this Agreement 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 a Credit Party with respect to the Obligations in connection with this Agreement or otherwise. Any agreement providing for indemnification, reimbursement or any other arrangement prohibited under this Section shall be null and void. If any payment is

made to a Credit Party in contravention of this Section, such Credit Party shall hold such payment in trust for the Lenders and Agent and such payment shall be promptly delivered to Agent for application to the Obligations, whether matured or unmatured.

13.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

13.17 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrower, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrower in accordance with the USA PATRIOT Act.

13.18 Warrants. Notwithstanding anything to the contrary herein, any warrants issued to the Lenders by any Credit Party, the stock issuable thereunder, any equity securities purchased by Lenders, any amounts paid thereunder, any dividends, and any other rights in connection therewith shall not be subject to the terms and conditions of this Agreement. Nothing herein shall affect any Lender's rights under any such warrants, stock, or other equity securities to administer, manage, transfer, assign, or exercise such warrants, stock, or other equity securities for its own account.

13.19 Process Agent. Each Credit Party that is incorporated under the laws of a jurisdiction other than the United States (or any state thereof) hereby irrevocably designates, appoints, authorizes and empowers Corporate Creations Network Inc. with an office located at 2 Wisconsin Circle #700, Chevy Chase, MD 20815 on the date hereof (the "**Process Agent**"), as its agent to receive on behalf of itself, service of copies of the summons and complaint and any other process which may be served in any suit, action or proceeding brought in connection with this Agreement in the circuit court of any county of the state of Maryland, and any appellate court thereof. To the fullest extent permitted by applicable laws, such service may be made by mailing or delivering a copy of such process to such Credit Party in care of the Process Agent at its address specified above, and each such Credit Party hereby authorizes and directs the Process Agent to receive such service on its behalf. The appointment of the Process Agent shall be irrevocable by each such Credit Party until the appointment of a successor Process Agent. Each such Credit Party further agrees promptly to appoint a successor Process Agent in Maryland (which shall accept such appointment in form and substance satisfactory to Agent) prior to the termination for any reason of the appointment of the initial Process Agent. Nothing in this Section 13.19 shall affect the right of any party hereto to serve process in any manner permitted by applicable law or to enforce in any lawful manner a judgment obtained in one jurisdiction in any other jurisdiction.

14. AGENT

14.1 Appointment and Authorization of Agent. Each Lender hereby irrevocably appoints, designates and authorizes Agent to take such action on its behalf under the provisions of this Agreement and each other Financing Document and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Agreement or any other Financing Document, together with such powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of Agent and the Lenders and none of Credit Parties nor any other Person shall have any rights as a third party beneficiary of any of the provisions hereof. The duties of Agent shall be mechanical and administrative in nature. Notwithstanding any provision to the contrary contained elsewhere herein or in any other Financing Document, Agent shall not have any duties or responsibilities, except

those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender or participant, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Financing Document or otherwise exist against Agent. Without limiting the generality of the foregoing sentence, the use of the term “agent” herein and in the other Financing Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (a) act as collateral agent for Agent and each Lender for purposes of the perfection of all liens created by the Financing Documents and all other purposes stated therein, (b) manage, supervise and otherwise deal with the Collateral, (c) take such other action as is necessary or desirable to maintain the perfection and priority of the liens created or purported to be created by the Financing Documents, (d) except as may be otherwise specified in any Financing Document, exercise all remedies given to Agent and the other Lenders with respect to the Collateral, whether under the Financing Documents, applicable law or otherwise and (e) execute any amendment, consent or waiver under the Financing Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Agent and the Lenders for purposes of the perfection of all liens with respect to the Collateral, including any deposit account maintained by a Credit Party with, and cash and cash equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such liens or otherwise to transfer the Collateral subject thereto to Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed.

14.2 Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, or (ii) any Person to whom Agent, in its capacity as a Lender, has assigned (or will assign, in conjunction with such assignment of agency rights hereunder) fifty percent (50%) or more of the Credit Extensions or Applicable Commitments then held by Agent (in its capacity as a Lender), in each case without the consent of the Lenders or Borrower. Following any such assignment, Agent shall give notice to the Lenders and Borrower. An assignment by Agent pursuant to this subsection (a) shall not be deemed a resignation by Agent for purposes of subsection (b) below.

(b) Without limiting the rights of Agent to designate an assignee pursuant to subsection (a) above, Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon receipt of any such notice of resignation, Required Lenders shall have the right to appoint a successor Agent. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within ten (10) Business Days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent; *provided, however*, that if Agent shall notify Borrower and the Lenders that no Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice from Agent that no Person has accepted such appointment and, from and following delivery of such notice, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Financing Documents, and (ii) all payments, communications and determinations provided to be made by, to or through Agent shall instead be made by or to each Lender directly, until such time as Required Lenders appoint a successor Agent as provided for above in this subsection (b).

(c) Upon (i) an assignment permitted by subsection (a) above, or (ii) the acceptance of a successor’s appointment as Agent pursuant to subsection (b) above, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder and under the other Financing Documents (if not already discharged therefrom as provided above in this subsection (c)). The fees payable by Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrower and such successor. After the retiring Agent’s resignation hereunder and under the other Financing Documents, the provisions of this Article shall continue in effect for the benefit of such retiring Agent and its sub-agents in

respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting or was continuing to act as Agent.

14.3 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Financing Document by or through its, or its Affiliates', agents, employees or attorneys-in-fact and shall be entitled to obtain and rely upon the advice of counsel and other consultants or experts concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct. Any such Person to whom Agent delegates a duty shall benefit from this Article 14 to the extent provided by Agent.

14.4 Liability of Agent. Except as otherwise provided herein, no "Agent-Related Person" (as defined below) shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Financing Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct in connection with its duties expressly set forth herein), or (b) be responsible in any manner to any Lender or participant for any recital, statement, representation or warranty made by any Credit Party or any officer thereof, contained herein or in any other Financing Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Financing Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Financing Document, or for any failure of any Credit Party or any other party to any Financing Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lender or participant to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Financing Document, or to inspect the Collateral, other properties or books or records of any Credit Party or any Affiliate thereof. The term "**Agent-Related Person**" means Agent, together with its Affiliates, and the officers, directors, employees, agents, advisors, auditors and attorneys-in-fact of such Persons; provided, however, that no Agent-Related Person shall be an Affiliate of Borrower.

14.5 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under any Financing Document (a) if such action would, in the opinion of Agent, be contrary to law or any Financing Document, (b) if such action would, in the opinion of Agent, expose Agent to any potential liability under any law, statute or regulation or (c) if Agent shall not first have received such advice or concurrence of all Lenders as it deems appropriate and, if it so requests, it shall first be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Financing Document in accordance with a request or consent of all Lenders (or Required Lenders where authorized herein) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders.

14.6 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default and/or Event of Default, unless Agent shall have received written notice from a Lender or Borrower, describing such default or Event of Default. Agent will notify the Lenders of its receipt of any such notice. While an Event of Default has occurred and is continuing, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default as Agent shall deem advisable or in the best interest of the Lenders, including without limitation, satisfaction of other security interests, liens or encumbrances on the Collateral not permitted under the Financing Documents, payment of taxes on behalf of Borrower or any other Credit Party, payments to landlords, warehouseman, bailees and other Persons in possession of the Collateral and other actions to protect and safeguard the Collateral, and actions with respect to insurance claims for casualty events affecting a Credit Party and/or the Collateral.

14.7 Credit Decision: Disclosure of Information by Agent. Each Lender acknowledges that no Agent-Related Person has made any representation or warranty to it, and that no act by Agent hereafter taken, including

any consent to and acceptance of any assignment or review of the affairs of Borrower or any Affiliate thereof, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender as to any matter, including whether Agent-Related Persons have disclosed material information in their possession. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties, and all applicable bank or other regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower hereunder. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Financing Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower. Except for notices, reports and other documents expressly required to be furnished to the Lenders by Agent herein, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Credit Party which may come into the possession of any Agent-Related Person.

14.8 Indemnification of Agent. Whether or not the transactions contemplated hereby are consummated, each Lender shall, severally and pro rata based on its respective Pro Rata Share, indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities (which shall not include legal expenses of Agent incurred in connection with the closing of the transactions contemplated by this Agreement) incurred by it; *provided, however*, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; *provided, however*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section. Without limitation of the foregoing, each Lender shall, severally and pro rata based on its respective Pro Rata Share, reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Protective Advances incurred after the closing of the transactions contemplated by this Agreement) incurred by Agent (in its capacity as Agent, and not as a Lender) in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Financing Document, or any document contemplated by or referred to herein, to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment in full of the Obligations, the termination of this Agreement and the resignation of Agent. The term "Indemnified Liabilities" means those liabilities described in Section 13.2(a) and Section 13.2(b).

14.9 Agent in its Individual Capacity. With respect to its Credit Extensions, MidCap shall have the same rights and powers under this Agreement as any other Lender and may exercise such rights and powers as though it were not Agent, and the terms "Lender" and "Lenders" include MidCap in its individual capacity. MidCap and its Affiliates may lend money to, invest in, and generally engage in any kind of business with, any Credit Party and any of their Affiliates and any person who may do business with or own securities of any Credit Party or any of their Affiliates, all as if MidCap were not Agent and without any duty to account therefor to Lenders. MidCap and its Affiliates may accept fees and other consideration from a Credit Party for services in connection with this Agreement or otherwise without having to account for the same to the Lenders. Each Lender acknowledges the potential conflict of interest between MidCap as a Lender holding disproportionate interests in the Credit Extensions and MidCap as Agent, and expressly consents to, and waives, any claim based upon, such conflict of interest.

14.10 Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Credit Party, Agent (irrespective of whether the principal of any Credit Extension, shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Agent shall have made any demand on such Credit Party) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Credit Extensions and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and Agent and their respective agents and counsel and all other amounts due the Lenders and Agent allowed in such judicial proceeding); and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Agent and, in the event that Agent shall consent to the making of such payments directly to the Lenders, to pay to Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agent and its agents and counsel, including Protective Advances. To the extent that Agent fails timely to do so, each Lender may file a claim relating to such Lender's claim.

14.11 Collateral and Guaranty Matters. The Lenders irrevocably authorize Agent, at its option and in its discretion, to release (a) any Credit Party and any Lien on any Collateral granted to or held by Agent under any Financing Document upon the date that all Obligations (other than inchoate indemnity obligations for which no claim has yet been made and any other obligations which, by their terms, are to survive the termination of this Agreement) due hereunder have been fully and indefeasibly paid in full and no Applicable Commitments or other obligations of any Lender to provide funds to Borrower under this Agreement remain outstanding, and (b) any Lien on any Collateral that is transferred or to be transferred as part of or in connection with any transfer permitted hereunder or under any other Financing Document. Upon request by Agent at any time, all Lenders will confirm in writing Agent's authority to release its interest in particular types or items of Collateral pursuant to this Section 14.11.

14.12 Advances; Payments; Non-Funding Lenders.

(a) Advances; Payments. If Agent receives any payment for the account of the Lenders on or prior to 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Agent receives any payment for the account of the Lenders after 11:00 a.m. (New York time) on any Business Day, Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day. To the extent that any Lender has failed to fund any Credit Extension (a "**Non-Funding Lender**"), Agent shall be entitled to set-off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower.

(b) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Credit Party and such related payment is not received by Agent, then Agent will be entitled to recover such amount (including interest accruing on such amount at the Federal Funds Rate for the first Business Day and thereafter, at the rate otherwise applicable to such Obligation) from such Lender on demand without set-off, counterclaim or deduction of any kind.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to a Credit Party or paid to any other person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to a Credit Party or such other person, without set-off, counterclaim or deduction of any kind.

14.13 Miscellaneous.

(a) Neither Agent nor any Lender shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other advance required hereunder. The failure of any Non-Funding Lender to make any Credit Extension or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an “Other Lender”) of its obligations to make the Credit Extension or payment required by it, but neither any Other Lender nor Agent shall be responsible for the failure of any Non-Funding Lender to make a Credit Extension or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a “Lender” (or be included in the calculation of “Required Lender” hereunder) for any voting or consent rights under or with respect to any Financing Document. At Borrower’s request, Agent or a person reasonably acceptable to Agent shall have the right with Agent’s consent and in Agent’s sole discretion (but shall have no obligation) to purchase from any Non-Funding Lender, and each Non-Funding Lender agrees that it shall, at Agent’s request, sell and assign to Agent or such person, all of the Applicable Commitments and all of the outstanding Credit Extensions of that Non-Funding Lender for an amount equal to the principal balance of the Credit Extensions held by such Non-Funding Lender and all accrued interest and fees with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement reasonably acceptable to Agent.

(b) Each Lender shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender’s portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements paid or made by any Credit Party. Notwithstanding the foregoing, if this Agreement requires payments of principal and interest to be made directly to the Lenders, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; *provided, however*, if it is determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Agent (for Agent to redistribute to itself and the Lenders in a manner to ensure the payment to Agent of any sums due Agent hereunder and the ratable repayment of each Lender’s portion of any Credit Extension and the ratable distribution of interest, fees and reimbursements) such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities and whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise, shall be received by a Lender in excess of its ratable share, then (i) the portion of such payment or distribution in excess of such Lender’s ratable share shall be received by such Lender in trust for application to the payments of amounts due on the other Lender’s claims, or, in the case of Collateral, shall hold such Collateral for itself and as agent and bailee for Agent and other Lenders and (ii) such Lender shall promptly advise Agent of the receipt of such payment, and, within five (5) Business Days of such receipt and, in the case of payments and distributions, such Lender shall purchase (for cash at face value) from the other Lenders (through Agent), without recourse, such participations in the Credit Extension made by the other Lenders as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them in accordance with the respective Pro Rata Shares of the Lenders; *provided, however*, that if all or any portion of such excess payment is thereafter recovered by or on behalf of a Credit Party from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest; *provided, further*, that the provisions of this Section shall not be construed to apply to (x) any payment made by a Credit Party pursuant to and in accordance with the express terms of this Agreement or the other Financing Documents, or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Applicable Commitment pursuant to Section 13.1. Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section may exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of Borrower in the amount of such participation. No documentation other than notices and the like shall be required to implement the terms of this Section. Agent shall keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased pursuant to this Section and shall in each case notify the the Lenders following any such purchases.

15. DEFINITIONS

In addition to any terms defined elsewhere in this Agreement, or in any schedule or exhibit attached hereto, as used in this Agreement, the following terms have the following meanings:

“**Access Agreement**” means a landlord consent, bailee letter or warehouseman’s letter, in form and substance reasonably satisfactory to Agent, in favor of Agent executed by such landlord, bailee or warehouseman, as applicable, for any third party location.

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

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

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

“**Agent**” means, MidCap, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders, together with its successors and assigns.

“**Agreed Currency**” has the meaning given it in Section 10.9.

“**Agreement**” has the meaning given it in the preamble of this Agreement.

“**AML Legislation**” has the meaning giving it in Section 7.12(b).

“**Anti-Terrorism Laws**” means any Laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the Laws comprising or implementing the Bank Secrecy Act, and the Laws administered by OFAC.

“**Applicable Commitment**” has the meaning given it in Section 2.2

“**Applicable Floor**” means for each Credit Facility the per annum rate of interest specified on the Credit Facility Schedule; provided, however, that for the Applicable Prime Rate, the Applicable Floor is a per annum rate that is three hundred (300) basis points above the Applicable Floor for the Applicable Libor Rate.

“**Applicable Index Rate**” means, for any Applicable Interest Period, the rate per annum determined by Agent equal to the Applicable Libor Rate; provided, however, that in the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of Agent or any Lender, make it unlawful or impractical for Agent or such Lender to fund or maintain Obligations bearing interest based upon the Applicable Libor Rate, Agent or such Lender shall give notice of such changed circumstances to Agent and Borrower and the Applicable Index Rate for Obligations outstanding or thereafter extended or made by Agent or such Lender shall thereafter be the Applicable Prime Rate until Agent or such Lender determines (as to the portion of the Credit Extensions or Obligations owed to it) that it would no longer be unlawful or impractical to fund or maintain such Obligations or Credit Extensions at the Applicable Libor Rate. In the event that Agent shall have determined (which determination shall be final and conclusive and binding upon all parties hereto), as of any Applicable Interest Rate Determination Date, that adequate and fair means do not exist for ascertaining the interest rate applicable to any Credit Facility on the basis provided for herein, then Agent may select a comparable replacement index and corresponding margin.

“**Applicable Interest Period**” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule; provided, however, that at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Period shall mean the period commencing as of the most recent Applicable Interest Rate Determination Date and continuing until the next Applicable Interest Rate Determination Date or such earlier date as the Applicable Prime Rate shall no longer be the Applicable Index Rate; and provided, further, that at any time the Libor Rate Index is adjusted as set forth in the definition thereof, or re-implemented following invocation of the Applicable Prime Rate as permitted herein, the Applicable Interest Period shall mean the period commencing as

of such adjustment or re-implementation and continuing until the next Applicable Interest Rate Determination Date, if any.

“Applicable Interest Rate” means a per annum rate of interest equal to the Applicable Index Rate plus the Applicable Margin.

“Applicable Interest Rate Determination Date” means the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period; provided, however, that at any time that the Applicable Prime Rate is the Applicable Index Rate, Applicable Interest Rate Determination Date means the date of any change in the Base Rate Index; and provided, further, that at any time the Libor Rate Index is adjusted as set forth in the definition thereof, the Applicable Interest Rate Determination Date shall mean the date of such adjustment or the second (2nd) Business Day prior to the first (1st) day of the related Applicable Interest Period, as elected by Agent.

“Applicable Libor Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Libor Rate Index.

“Applicable Margin” for each Credit Facility has the meaning specified for that Credit Facility in the Credit Facility Schedule.

“Applicable Pension and Benefit Laws” has the meaning giving it in Section 5.10(b).

“Applicable Prepayment Fee”, for each Credit Facility, has the meaning given it in the Credit Facility Schedule for such Credit Facility.

“Applicable Prime Rate” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%), equal to the greater of (a) the Applicable Floor and (b) the Base Rate Index.

“Approved Fund” means any (a) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the Ordinary Course of Business, or (b) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (a) and that, with respect to each of the preceding clauses (a) and (b), is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

“Base Rate Index” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) as being the rate of interest announced, from time to time, within Wells Fargo Bank, N.A. (“Wells Fargo”) at its principal office in San Francisco as its “prime rate,” with the understanding that the “prime rate” is one of Wells Fargo’s base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; provided, however, that Agent may, upon prior written notice to any Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate Index.

“Blocked Person” means: (a) any Person listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in Executive Order No. 13224, or (e) a Person that is named a “specially designated national” or “blocked person” on the most current list published by OFAC or other similar list.

“Books” means all of books and records of a Person, including ledgers, federal and state tax returns,

records regarding the Person's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrower" mean the entity(ies) described in the first paragraph of this Agreement as Borrower and each of their successors and permitted assigns. The term "each Borrower" shall refer to each Person comprising the Borrower if there is more than one such Person, or the sole Borrower if there is only one such Person. The term "any Borrower" shall refer to any Person comprising the Borrower if there is more than one such Person, or the sole Borrower if there is only one such Person.

"Borrowing Resolutions" means, with respect to any Person, those resolutions, in form and substance satisfactory to Agent, adopted by such Person's Board of Directors or other appropriate governing body and delivered by such Person to Agent approving the Financing Documents to which such Person is a party and the transactions contemplated thereby, as well as any other approvals as may be necessary or desired to approve the entering into the Financing Documents or the consummation of the transactions contemplated thereby or in connection therewith.

"Business Day" means any day that is not (a) a Saturday or Sunday or (b) a day on which Agent is closed.

"Canadian Income Tax Act" means the Income Tax Act (Canada), as amended from time to time.

"Canadian Credit Party" means Impopharma and any other Credit Party party hereto, from time to time, organized under the laws of Canada or any province thereof.

"Canadian DB Plan" means a Canadian Pension Plan with a "defined benefit provision" as such term is defined in the Canadian Income Tax Act.

"Canadian Pension Plan" shall mean a "registered pension plan", as that term is defined in subsection 248(1) of the Canadian Income Tax Act, sponsored, administered or contributed to, or required to be contributed to by, any Credit Party or under which any Credit Party has any liability, contingent or otherwise.

"Canadian Security Documents" means, collectively, (i) all security agreements executed by each of the Canadian Credit Parties in favor of Agent on behalf of the Lenders creating a first ranking security interest over all of the respective present and after-acquired property of the Canadian Credit Parties; and (ii) and each other agreement, document or instrument executed concurrently herewith or at any time hereafter governed by the laws of Canada or any province thereof pursuant to which a Canadian Credit Party or any other Person provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time, all in a form acceptable to Agent and may be as amended, restated, or otherwise modified from time to time.

"Change in Control" means any event, transaction, or occurrence as a result of which (a) at any time prior to the consummation of an IPO, the Preferred Investors cease to own and control all of the economic and voting rights associated with ownership of more than 35% of the outstanding securities of all classes of Impopharma on a fully diluted basis (other than by the sale of Impopharma's equity securities in or following an IPO), (b) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a Preferred Investor or a trustee or other fiduciary holding securities under an employee benefit plan of Impopharma, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of equity securities of Impopharma, representing twenty-five percent (33%) or more of the combined voting power of Impopharma's then outstanding securities (other than by the sale of Impopharma's equity securities in or following an IPO); (c) Borrower ceases to own and control, directly or indirectly, all of the economic and voting rights associated with the outstanding securities of each of its Subsidiaries; (d) the occurrence of any "change in control" or any term or provision of similar effect under any Subordinated Debt Document or Borrower's Operating Documents; or (e) the chief executive officer of Borrower as of the date hereof shall cease to be involved in the day to day operations (including research and development) or management of the business of Borrower, and a successor of such officer reasonably acceptable to Agent is not appointed on terms reasonably acceptable to Agent

within 90 days of such cessation or involvement; *provided* that a successor who satisfies the requirements of Section 7.12(b) hereof and has at least the experience and credentials of the departing chief executive officer shall be deemed acceptable to Agent for purposes of this clause (e).

“**Closing Date**” has the meaning given it in the preamble of this Agreement.

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

“**Collateral**” means all property, now existing or hereafter acquired, mortgaged or pledged to, or purported to be subjected to a Lien in favor of, Agent, for the benefit of Agent and the Lenders, pursuant to this Agreement and the other Financing Documents, including, without limitation, all of the property described in **Exhibit A** hereto.

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

“**Commitment Commencement Date**” has the meaning given it in the Credit Facility Schedule.

“**Commitment Termination Date**” has the meaning given it in the Credit Facility Schedule.

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

“**Compliance Certificate**” means a certificate, duly executed by an authorized officer of Borrower, appropriately completed and substantially in the form of **Exhibit B**.

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

“**Control Agreement**” means any control agreement, each of which shall be in form and substance satisfactory to Agent, entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Agent pursuant to which Agent obtains control (within the meaning of the Code) (or the ability to give instructions therefor for Deposit Accounts in Canada) for the benefit of the Lenders over such Deposit Account, Securities Account or Commodity Account.

“**Credit Extension**” means an advance or disbursement of proceeds to or for the account of Borrower in respect of a Credit Facility.

“**Credit Extension Form**” means that certain form attached hereto as **Exhibit C**, as the same may be from time to time revised by Agent.

“**Credit Facility**” means a term loan credit facility specified on the Credit Facility Schedule.

“**Credit Party**” means any Borrower, any Guarantor, and any other Person (other than Agent, a Lender or a participant of a Lender), whether now existing or hereafter acquired or formed, that becomes obligated as a borrower, guarantor, surety, indemnitor, pledgor, assignor or other obligor under any Financing Document, and any Person whose equity interests or portion thereof have been pledged or hypothecated to Agent under any Financing Document; and “**Credit Parties**” means all such Persons, collectively.

“**DEA**” means the Drug Enforcement Administration of the United States of America, any comparable state, provincial or local Government Authority, any comparable Government Authority in any non-United States jurisdiction (including, without limitation, the Royal Canadian Mounted Police Drug Enforcement Division), and any successor agency of any of the foregoing.

“**Default**” means any fact, event or circumstance which with notice or passage of time or both, could constitute an Event of Default.

“**Default Rate**” has the meaning given it in Section 2.6(b).

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

“**Designated Funding Account**” is Borrower’s Deposit Account, account number 7319129, maintained with TD Canada Trust and over which Agent has been granted a perfected security interest for the ratable benefit of all Lenders and for which a Control Agreement has been entered into.

“**Dollars**,” “**dollars**” and “**\$**” each means lawful money of the United States.

“**Draw Period**” means, for each Credit Facility, the period commencing on the Commitment Commencement Date and ending on the Commitment Termination Date.

“**Drug Application**” means a new drug application, an abbreviated drug application, or a product license application for any Product, as appropriate, as those terms are defined in the FDCA.

“**Eligible Assignee**” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by Agent; *provided, however*, that notwithstanding the foregoing, “Eligible Assignee” shall not include (i) any Credit Party or any Subsidiary of a Credit Party or (ii) unless an Event of Default has occurred and is continuing, (A) any hedge fund or private equity fund that is primarily engaged in the business of purchasing distressed debt or (B) any direct competitor of Credit Parties, in each case, as determined by Agent in its reasonable discretion. Notwithstanding the foregoing, in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party becoming an assignee incident to such forced divestiture.

“**Environmental Law**” means each present and future law (statutory or common), ordinance, treaty, rule, regulation, order, policy, other legal requirement or determination of an arbitrator or of a Governmental Authority and/or Required Permits imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the workplace, the environment and natural resources, and including public notification requirements and environmental transfer of ownership, notification or approval statutes.

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

“**ERISA**” means the Employee Retirement Income Security Act of 1974, and all regulations promulgated thereunder.

“**ERISA Affiliate**” has the meaning given it in Section 5.6.

“**Event of Default**” has the meaning given it in Section 10.1.

“**Excluded Property**” means (a) prior to the delivery of the G&W Consent is required to be delivered in accordance with the requirements of Section 6.13, the G&W Background Intellectual Property, and (b) the Villarboit Leases, in each case, only for so long as the grant of a security interest therein shall require the consent of any third party that cannot be obtained after the use of commercially reasonable efforts to obtain such consent (in each case of clauses, other than to the extent that any such requirement for consent would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law); *provided* that such security interest shall attach immediately to each portion of such lease, contract, property rights or agreement that does not require consent; and *provided, further* that “**Excluded Property**” shall not include any proceeds, products, substitutions, receivables or replacements of Excluded Property (unless such proceeds, products, substitutions, receivables or replacements would otherwise constitute Excluded Property).

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Credit Extension or Applicable Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Credit Extension or Applicable Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6(h)(i) or 2.6(h)(iii), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.6(h)(vi) and (vii) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**Exigent Circumstance**” has the meaning given it in Section 13.14.

“**FATCA**” means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the IRC.

“**FCPA**” has the meaning given it in Section 5.12.

“**FDA**” means the Food and Drug Administration of the United States of America, any comparable state, provincial or local Government Authority, any comparable Government Authority in any non-United States jurisdiction (including, but not limited to, Health Canada), and any successor agency of any of the foregoing.

“**FDCA**” means the Federal Food, Drug and Cosmetic Act, as amended, 21 U.S.C. Section 301 et seq., and all regulations promulgated thereunder.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent in a commercially reasonable manner.

“Fee Letters” means, collectively, the fee letter agreements among Borrower and Agent and Borrower and each Lender.

“Financing Documents” means, collectively, this Agreement, the Perfection Certificate, the Security Documents, each Subordination Agreement and any subordination or intercreditor agreement pursuant to which any Indebtedness and/or any Liens securing such Indebtedness is subordinated to all or any portion of the Obligations, the Fee Letter(s), each note and guarantee executed by one or more Credit Parties in connection with the indebtedness governed by this Agreement, and each other present or future agreement executed by one or more Credit Parties and, or for the benefit of, the Lenders and/or Agent in connection with this Agreement, all as amended, restated, or otherwise modified from time to time.

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

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

“G&W Background Intellectual Property” means the Impopharma Background Intellectual Property, as defined in the G&W Development Agreement.

“G&W Consent” has the meaning given it on the Post-Closing Obligations Schedule of this Agreement.

“G&W Development Agreement” means that certain Development and Commercialization Agreement, dated as of June 9, 2016, by and among G&W Laboratories and Impopharma.

“G&W Laboratories” means G&W Laboratories, Inc., a New Jersey corporation.

“GAAP” means accounting principles generally accepted in Canada as set out in the CPA Canada Handbook - Accounting at the relevant time applied on a consistent basis including, without limitation, Canadian Accounting Standards for Private Enterprises (ASPE).

“General Intangibles” means all “general intangibles”, as defined in the Code, with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable Law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including, without limitation, key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

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

“Guarantor” means any present or future guarantor of the Obligations.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” “pollutant” or other words of similar import within the meaning

of any Environmental Law, including: (a) any “hazardous substance” defined as such in (or for purposes of) CERCLA, or any so-called “superfund” or “superlien” Law, including the judicial interpretation thereof; (b) any “pollutant or contaminant” as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any “hazardous chemical” as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

“**Hazardous Materials Contamination**” means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

“**Impopharma**” has the meaning given it in the preamble of this Agreement.

“**Indebtedness**” means (a) indebtedness for borrowed money (including the Obligations) or the deferred price of, or payment for, property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker’s acceptance or similar instrument, (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (f) obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (g) “earnouts”, purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (h) all Indebtedness of others guaranteed by such Person, (i) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person, (j) obligations arising under non-compete agreements, (k) obligations arising under bonus, deferred compensation, incentive compensation or similar arrangements, other than those arising in the Ordinary Course of Business, and (l) Contingent Obligations.

“**Indemnified Liabilities**” has the meaning given it in Section 14.8.

“**Indemnified Taxes**” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under this Agreement and (b) to the extent not otherwise described in (a), Other Taxes.

“**Indemnitee**” has the meaning given it in Section 13.2.

“**Insolvency Proceeding**” means any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency Law, (including, for the avoidance of doubt, the *Bankruptcy and Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada), including assignments for the benefit of creditors, compositions, examinership, winding-up, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, schedules of arrangement, examinership or other relief.

“**Intellectual Property**” means all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, patent applications and like protections, including improvements, divisions, continuations, renewals, reissues, extensions, and continuations-in-part of the same, trademarks, trade names, service marks, mask works, rights of use of any name, domain names, or any other similar rights, any applications therefor, whether registered or not, know-how, operating manuals, trade secret rights, clinical and non-clinical data, rights to unpatented inventions, and any claims for damage by way of any past, present, or future infringement of any of the foregoing.

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

“Investment” means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, Product, business line or product line, division or other unit operation of any Person or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

“IP Security Agreement” means any security agreement executed by Borrower that grants (or is prepared as a notice filing or recording with respect to) a Lien or security interest in favor of Agent and/or the Lenders on Intellectual Property, each as amended, restated, or otherwise modified from time to time.

“IPO” means an underwritten public offering of common stock of Impopharma or any of its Subsidiaries pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act of 1933, as amended, and that results in the listing of the common stock of Impopharma or any such Subsidiary on a national securities exchange.

“IRC” means the Internal Revenue Code of 1986, as amended, and any successor provisions.

“IRS” means the United States Internal Revenue Service.

“Joinder Requirements” has the meaning set forth in Section 6.8.

“Laws” means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, guidance, guidelines, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance.

“Lender” means any one of the Lenders.

“Lenders” means the Persons identified on the Credit Facility Schedule as amended from time to time to reflect assignments made in accordance with this Agreement.

“Libor Rate Index” means, for any Applicable Interest Period, the rate per annum, determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by dividing (a) the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Applicable Interest Period or, if such day is not a Business Day, on the preceding Business Day) in the amount of One Million Dollars (\$1,000,000) are offered to major banks in the London interbank market on or about 11:00 a.m. (New York time) on the Applicable Interest Rate Determination Date, for a period of thirty (30) days, which determination shall be conclusive in the absence of manifest error, by (b) 100% minus the Reserve Percentage; provided, however, that Agent may, upon prior written notice to any Borrower, choose a reasonably comparable index or source to use as the basis for the Libor Rate Index. The Libor Rate Index may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then Applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the Libor Rate Index; provided, however, that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall

Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such Libor Rate Index and the method for determining the amount of such adjustment.

"License Agreements" means all in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public).

"Lien" means a claim, mortgage, deed of trust, lien, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of Law or otherwise against any property.

"Margin Stock" means "margin stock" as such term is defined in Regulation T, U, or X of the Board of Governors of the Federal Reserve System.

"Material Adverse Change" means (a) a material impairment in the perfection or priority of the Agent's Lien (or any Lender's Lien therein to the extent provided for in the Financing Documents) in the Collateral; (b) a material impairment in the value of the Collateral; (c) a material adverse change in the business, operations, or financial condition of the Credit Parties, taken as a whole; or (d) a material impairment of the prospect of repayment of any portion of the Obligations when due.

"Material Agreement" means (a) the agreements listed in the **Disclosure Schedule**, (b) each Material License Agreement, and (d) each agreement or contract to which such Credit Party or its Subsidiaries is a party the termination of which would reasonably be expected to result in a Material Adverse Change.

"Material Indebtedness" has the meaning given it in Section 10.1.

"Material Intangible Assets" means (i) all of Borrower's Intellectual Property and (ii) each License Agreement that, in the case of each of clauses (i) and (ii), is material to the condition (financial or other), business or operations of Borrower.

"Material License Agreement" means a License Agreement which constitutes a Material Intangible Asset.

"Maturity Date" means January 1, 2020.

"Maximum Lawful Rate" has the meaning given it in Section 2.6(g).

"MidCap" has the meaning given it in the preamble of this Agreement.

"Multiemployer Plan" means any employee benefit plan of the type described in and subject to Section 4001(a)(3) or ERISA, to which any Credit Party or any ERISA Affiliate has at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability, contingent or otherwise.

"Obligations" means all of Borrower's obligations to pay when due any debts, principal, interest, Protective Advances, fees, indemnities and other amounts Borrower owes the Agent or the Lenders now or later, under this Agreement or the other Financing Documents, including, without limitation, interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Agent, and the payment and performance of each other Credit Party's covenants and obligations

under the Financing Documents. “Obligations” does not include obligations under any Warrants or any other warrants issued to Agent or a Lender.

“**OFAC**” means the U.S. Department of Treasury Office of Foreign Assets Control.

“**OFAC Lists**” means, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

“**Operating Documents**” means, for any Person, such Person’s formation documents, as certified with the Secretary of State (or other appropriate Governmental Authority) of such Person’s jurisdiction of formation on a date that is no earlier than thirty (30) days prior to the Closing Date, and (a) if such Person is a corporation, its bylaws and articles of incorporation, articles of association, articles of amalgamation or articles of amendment (as applicable) in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

“**Ordinary Course of Business**” means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party, as conducted by such Credit Party in accordance with past practices or then current business practices set forth in the most recent operating plan of Borrower to the extent approved by the Borrower’s board of directors, which shall in any event be at arms-length.

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

“**Other Currency**” has the meaning given it in Section 10.9.

“**Other Tax Certification**” means such certification or evidence, in each case in form and substance satisfactory to Agent, that any Lender or prospective Lender is exempt from, or eligible for a reduction in, U.S. federal withholding tax or backup withholding tax, including evidence supporting the basis for such exemption or reduction.

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

“**Participant Register**” has the meaning given it in Section 13.1(c).

“**Payment Date**” means the first calendar day of each calendar month.

“**PBGC**” means the Pension Benefit Guaranty Corporation, or any successor entity thereto.

“**Pension Plan**” means any employee benefit pension plan that is subject to the minimum funding standards under Section 412 of the Code or is covered by Title IV of ERISA (including a Multiemployer Plan) that any Credit Party or any ERISA Affiliate has, at any time (whether presently or in the past) sponsored, maintained, contributed to, or had an obligation to make contributions to or to which any Credit Party or any ERISA Affiliate has any liability (contingent or otherwise).

“**Perfection Certificate**” means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

“Permitted Contest” means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly diligently instituted and conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided, however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers’ and its Subsidiaries’ title to, and its right to use, the Collateral is not adversely affected thereby and Agent’s Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower’s or its Subsidiary’s intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement, and any material development in, the proceedings; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

“Permitted Contingent Obligations” means (a) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business; (b) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed Twenty-Five Thousand Dollars (\$25,000) in the aggregate at any time outstanding; (c) Contingent Obligations arising under indemnity agreements with title insurers; (d) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Article 7; (e) Contingent Obligations arising under the Financing Documents; (f) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any future, forward or swap contract, provided, however, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation; (g) Contingent Obligations existing or arising in connection with any security deposit or letter of credit obtained for the sole purpose of securing a lease of real property, or in connection with ancillary bank services such as a corporate credit card facility, provided that the aggregate face amount of all such security deposits, letters of credit and ancillary bank services does not at any time exceed One Hundred Thousand Dollars (\$100,000); and (h) other Contingent Obligations not permitted by clauses (a) through (g) above, not to exceed Twenty-Five Thousand Dollars (\$25,000) in the aggregate at any time outstanding.

“Permitted Indebtedness” means: (a) Borrower’s Indebtedness to the Lenders and Agent under this Agreement and the other Financing Documents; (b) Indebtedness existing on the Closing Date and described on the **Disclosure Schedule**; (c) Indebtedness secured by Permitted Liens; (d) Subordinated Debt; (e) unsecured Indebtedness to trade creditors incurred in the Ordinary Course of Business; (f) Permitted Contingent Obligations; (g) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness set forth in (b) and (c) above, *provided, however*, that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon the obligors thereunder; and (h) Indebtedness consisting of intercompany loans and advances made by any Credit Party to any other Credit Party, provided that (1) the obligations of the Credit Parties under such intercompany loan shall be subordinated at all times to the Obligations of the Credit Parties hereunder or under the other Financing Documents in a manner satisfactory to Agent and (2) to the extent that such Indebtedness is evidenced by a promissory note or other written instrument, Borrower shall pledge and deliver to Agent, for the benefit of itself and the Lenders, the original promissory note or instrument, as applicable, along with an endorsement in blank in form and substance satisfactory to Agent

“Permitted Investments” means: (a) Investments existing on the Closing Date and described on the **Disclosure Schedule**; (b) Investments consisting of cash equivalents; (c) any Investments in liquid assets permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Agent (provided, that, under no circumstances shall Borrower be permitted to invest in or hold Margin Stock); (d) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of any Credit Party; (e) Investments consisting of deposit accounts or securities accounts in which the Agent has a first priority perfected security interest except as otherwise provided by Section 6.6; (f) Investments in Subsidiaries solely to the extent

permitted pursuant to Section 6.8; (g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's board of directors; (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business; and (i) Investments consisting of intercompany Indebtedness in accordance with and to the extent permitted by clause (h) of the definition of "Permitted Indebtedness".

"Permitted License" means any non-exclusive license of Intellectual Property of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"Permitted Liens" means: (a) Liens existing on the Closing Date and shown on the **Disclosure Schedule** or arising under this Agreement and the other Financing Documents; (b) purchase money Liens or capital leases securing no more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate amount outstanding (i) on Equipment acquired or held by a Credit Party incurred for financing the acquisition of the Equipment, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment; (c) Liens for taxes, fees, assessments or other government charges or levies, either not delinquent or being contested in good faith and for which adequate reserves are maintained on the Books of the Credit Party against whose asset such Lien exists, *provided* that no notice of any such Lien has been filed or recorded under any applicable law, including, without limitation, the IRC and the treasury regulations adopted thereunder; (d) statutory Liens securing claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other Persons imposed without action of such parties in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest; (e) leases or subleases of real property granted in the Ordinary Course of Business, and leases, subleases, non-exclusive licenses or sublicenses of property (other than real property or Intellectual Property) granted in the Ordinary Course of Business, if the leases, subleases, licenses and sublicenses do not prohibit granting Agent a security interest; (f) banker's liens, rights of set-off and Liens in favor of financial institutions incurred made in the Ordinary Course of Business arising in connection with a Credit Party's Collateral Accounts provided that such Collateral Accounts are subject to a Control Agreement to the extent required hereunder; (g) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the Ordinary Course of Business (other than Liens imposed by ERISA); (h) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default; (i) easements, reservations, rights-of-way, restrictions, minor defects or irregularities in title and similar charges or encumbrances affecting real property not constituting a Material Adverse Change (j) the Liens of TD Bank on the TD Cash Collateral Accounts and the cash permitted to be on deposit therein; and (k) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) and (b) above, but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the Indebtedness may not increase.

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

"Personal Property Security Act" or **"PPSA"** means the *Personal Property Security Act* (Ontario).

"Pledge Agreement" means that certain Pledge Agreement executed by the Borrower in favor of Agent, for the benefit of Lenders, on the Closing Date covering all the equity interests owned by Impopharma, as amended, restated, or otherwise modified from time to time.

"Preferred Investor" means any owner of more than 10% of the Preferred Stock of Impopharma as of the Closing Date.

"Pro Rata Share" means, as determined by Agent, with respect to each Credit Facility and Lender holding

an Applicable Commitment or Credit Extensions in respect of such Credit Facility, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by *dividing* (a) in the case of fully-funded Credit Facilities, the amount of Credit Extensions held by such Lender in such Credit Facility *by* the aggregate amount of all outstanding Credit Extensions for such Credit Facility, and (b) in the case of Credit Facilities that are not fully-funded, the amount of Credit Extensions and unfunded Applicable Commitments held by such Lender in such Credit Facility *by* the aggregate amount of all outstanding Credit Extensions and unfunded Applicable Commitments for such Credit Facility.

“**Process Agent**” has the meaning given it in Section 13.19.

“**Products**” means any products manufactured, sold, developed, tested or marketed by any Borrower or any of its Subsidiaries, in each case for the benefit of Borrower or any of its Subsidiaries and not as a service provider for the benefit of a third party, including without limitation, those products set forth on the **Products Schedule** (as updated from time to time in accordance with Section 6.16); *provided*, that, for the avoidance of doubt, any new Product not disclosed on the **Products Schedule** shall still constitute a “Product” as herein defined.

“**Protective Advances**” means all audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) of Agent and the Lenders for preparing, amending, negotiating, administering, defending and enforcing the Financing Documents and the Warrants (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Agent or the Lenders in connection with the Financing Documents and the Warrants.

“**Recipient**” means the Agent and any Lender, as applicable.

“**Register**” has the meaning given it in Section 13.1(d).

“**Registered Intellectual Property**” means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

“**Registered Organization**” means any “registered organization” as defined in the Code, with such additions to such term as may hereafter be made.

“**Regulatory Reporting Event**” has the meaning given it in Section 6.16(a).

“**Regulatory Required Permit**” means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any drug listings and drug establishment registrations under 21 U.S.C. Section 510, registrations issued by DEA under 21 U.S.C. Section 823 (if applicable to any Product), and those issued by State governments for the conduct of Borrower’s or any Subsidiary’s business.

“**Required Lenders**” means, unless all of the Lenders and Agent agree otherwise in writing, Lenders having (a) more than sixty percent (60%) of the Applicable Commitments of all Lenders, or (b) if such Applicable Commitments have expired or been terminated, more than sixty percent (60%) of the aggregate outstanding principal amount of the Credit Extensions.

“**Required Permit**” means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, provider numbers, marketing authorizations, other authorizations, registrations, permits, consents and approvals of a Credit Party issued or required under Laws applicable to the business of Borrower or any of its Subsidiaries or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of goods or services under Laws applicable to the business of Borrower or any of its Subsidiaries. Without limiting the generality of the foregoing, “**Required Permits**” includes any Regulatory Required Permit.

“Reserve Percentage” means, on any day, for any Lender, the maximum percentage prescribed by the Board of Governors of the Federal Reserve System (or any successor Governmental Authority) for determining the reserve requirements (including any basic, supplemental, marginal, or emergency reserves) that are in effect on such date with respect to eurocurrency funding (currently referred to as “eurocurrency liabilities”) of that Lender, but so long as such Lender is not required or directed under applicable regulations to maintain such reserves, the Reserve Percentage shall be zero.

“Responsible Officer” means any of the President, Chief Executive Officer or Chief Financial Officer of Borrower.

“Secretary’s Certificate” means, with respect to any Person, a certificate, in form and substance satisfactory to Agent, executed by such Person’s secretary (or another officer, if no secretary is appointed) on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Financing Documents to which it is a party, (b) that attached to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Financing Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Financing Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), (d) that attached to such certificate are true, correct, and complete copies of the Operating Documents of such Person (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of such Person) and good standing certificates of such Person certified by the Secretary of State of the state(s) of organization of such Person (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of such Person) as of a date no earlier than thirty (30) days prior to the Closing Date, (e) that attached to such certificate is true, correct, and complete copy of the any Registration Rights Agreement/Investors’ Rights Agreement, voting agreements or other agreements among shareholders and any amendments to the foregoing, in each case if applicable; and (f) that Agent and the Lenders may conclusively rely on such certificate unless and until such Person shall have delivered to Agent a further certificate canceling or amending such prior certificate.

“Secured Promissory Note” has the meaning given it in Section 2.7.

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

“Security Documents” means, collectively, the Pledge Agreement, each IP Security Agreement, each Account Control Agreement and the Canadian Security Documents, and each other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

“Spinnaker Way Location” means Borrower’s facilities located at 255 Spinnaker Way, Unit 6, Concord, ON L4K 4J1 Canada.

“Stated Rate” has the meaning given it in Section 2.6(g).

“Subordinated Debt” means indebtedness incurred by Borrower which shall be (a) in an amount satisfactory to Agent, (b) made pursuant to documents in form and substance satisfactory to Agent (the “Subordinated Debt Documents”), and (c) subordinated to all of Borrower’s now or hereafter indebtedness to Agent and the Lenders pursuant to a Subordination Agreement.

“Subordination Agreement” means a subordination, intercreditor, or other similar agreement in form and substance, and on terms, approved by Agent in writing.

“Subsidiary” means, with respect to any Person, any Person of which more than fifty percent (50.0%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled,

directly or indirectly, by such Person.

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

“**TD Bank**” means The Toronto-Dominion Bank, a chartered bank subject to the provisions of the *Bank Act* (Canada).

“**TD Cash Collateral Accounts**” means, collectively, those certain restricted Deposit Accounts at TD Bank established for the sole purpose of providing cash collateral for (i) the obligations owing under those certain TD VISA Business card(s) made available pursuant to the letter agreement dated November 14, 2014, as amended July 4, 2016, between TD Bank and the Borrower (the “**TD Credit Agreement**”), the balance of which shall not, at any time, exceed 88,000 Canadian dollars, and (ii) obligations owing under those certain treasury products made available pursuant to the TD Credit Agreement, the balance in which shall not, at any time, exceed \$100,000.

“**Transfer**” has the meaning given it in Section 7.1.

“**U.S. Credit Party**” means any Credit Party hereto, from time to time, organized under the laws of the United States or any state thereof.

“**U.S. Person**” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“**Villarboit Leases**” means (a) that certain Lease, dated as of September 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 3, Concord, ON., L4K 4J1, (b) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 4, Concord, ON., L4K 4J, (c) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 5, Concord, ON., L4K 4J, (d) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 6, Concord, ON., L4K 4J1, and (e) that certain Lease, dated as of August 26, 2010, by and among Villarboit Holdings Limited and Impopharma, as amended, restated, supplemented or modified from time to time, concerning the premises at 255 Spinnaker Way, Unit 7, Concord, ON., L4K 4J1.

“**Warrants**” means each warrant to purchase equity interests of Impopharma Inc., a corporation validly existing under the *Business Corporations Act* (Ontario), dated as of the Closing Date and as the same may be amended, restated, supplemented or modified from time to time in accordance with the terms thereof.

“**Withholding Agent**” means Borrower and Agent.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending that this instrument constitute an instrument executed and delivered under seal, the parties hereto have caused this Agreement to be executed as of the Closing Date.

BORROWER:

IMPOPHARMA INC.

By: *Vien Brewster* (SEAL)
Name: Vien Brewster
Title: Vice President, Finance and Secretary

IMPOPHARMA US, INC.

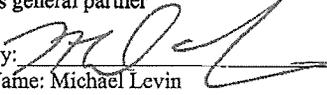
By: *Vien Brewster* (SEAL)
Name: Vien Brewster
Title: Vice President, Finance

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

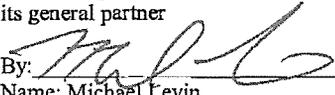
By:  _____ (SEAL)
Name: Michael Levin
Title: Authorized Signatory

LENDERS:

MIDCAP FUNDING XIII TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:  _____ (SEAL)
Name: Michael Levin
Title: Authorized Signatory

EXHIBITS AND SCHEDULES

EXHIBITS

Exhibit A	Collateral
Exhibit B	Form of Compliance Certificate
Exhibit C	Credit Extension Form

SCHEDULES

Credit Facility Schedule
Amortization Schedule
Post-Closing Obligations Schedule
Closing Deliveries Schedule
Disclosure Schedule
Intangible Assets Schedule
Products Schedule
Required Permits Schedule

EXHIBIT A
COLLATERAL

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

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

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

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

Notwithstanding the foregoing, the Collateral shall not include the Excluded Property.

EXHIBIT B

COMPLIANCE CERTIFICATE

TO: MidCap Financial Trust, as Agent
FROM: _____
DATE: _____, 201__

The undersigned authorized officer of Impopharma Inc., a corporation validly existing under the *Business Corporations Act* (Ontario) ("**Borrower**") certifies that under the terms and conditions of the Credit and Security Agreement between Borrower, the other Credit Parties party thereto, Agent and the Lenders (as amended, restated, supplemented, replaced or otherwise modified from time to time, the "**Agreement**"):

(1) Borrower is in complete compliance with all required covenants for the month ending _____, 201__, except as noted below;

(2) there are no Events of Default;

(3) all representations and warranties in Article 5 of the Agreement are true and correct in all material respects on this date except as noted below; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further*, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(4) each of Borrower and the other Credit Parties has timely filed all required tax returns and reports, and has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed except as otherwise permitted pursuant to the terms of the Agreement;

(5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Agent; and

(6) attached hereto is an updated [Disclosure Schedule][Required Permits Schedule][Products Schedule][Intangible Assets Schedule][INSERT AS APPROPRIATE] as required to be updated pursuant to the terms of the Credit and Security Agreement.

Attached are the required documents supporting the certifications set forth in this Compliance Certificate. The undersigned certifies, in his/her capacity as an officer of Borrower, that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges, in his/her capacity as an officer of Borrower, that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

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

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>
Monthly Cash Reconciliation	Monthly within 30 days	N/A
Quarterly Financial Statements	Quarterly within 30 days	Yes No
Audited Financial Statements	Annually within 120 days after FYE	Yes No
Board Approved Projections	Annually within 30 days after FYE	Yes No

Compliance Certificate	Monthly within 30 days	Yes	No
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The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

IMPOPHARMA, INC.

By: _____
 Name: _____
 Title: _____

AGENT USE ONLY

Received by: _____
 AUTHORIZED SIGNER
 Date: _____

Verified: _____
 AUTHORIZED SIGNER
 Date: _____

Compliance Status: Yes No

EXHIBIT C

CREDIT EXTENSION FORM

DEADLINE IS NOON NEW YORK TIME

Date: _____, 201__

LOAN ADVANCE:

Complete *Outgoing Wire Request* section below if all or a portion of the funds from this loan advance are for an outgoing wire.

From Account # _____ To Account # _____
(Loan Account #) (Deposit Account #)

Amount of Advance \$ _____

Requested Date of Advance (subject to requirements of Credit and Security Agreement): _____

All Borrower's representations and warranties in Article 5 of the Credit and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and *provided, further*, that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:

Authorized Signature: _____ **Phone Number:** _____
Print Name/Title: _____

OUTGOING WIRE REQUEST:

Complete only if all or a portion of funds from the loan advance above is to be wired.

Beneficiary Name: _____ Amount of Wire: \$ _____

Beneficiary Lender: _____ Account Number: _____

City and State: _____

Beneficiary Lender Transit (ABA) #: _____ Beneficiary Lender Code (Swift, Sort, Chip, etc.): _____
(For International Wire Only)

Intermediary Lender: _____ Transit (ABA) #: _____

For Further Credit to: _____

Special Instruction: _____

By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me.

Authorized Signature: _____ **2nd Signature (if required):** _____
Print Name/Title: _____ **Print Name/Title:** _____
Telephone #: _____ **Telephone #:** _____

CREDIT FACILITY SCHEDULE

Credit Facility and Type: Term

Lenders for and their respective Applicable Commitments to this Credit Facility:

Lender	Applicable Commitment
MidCap Funding XIII Trust	Seven Million Dollars (\$7,000,000.00)

The following defined terms apply to this Credit Facility:

Applicable Interest Period: means the one-month period starting on the first (1st) day of each month and ending on the last day of such month; *provided, however*, that the first (1st) Applicable Interest Period for each Credit Extension under this Credit Facility shall commence on the date that the applicable Credit Extension is made and end on the last day of such month.

Applicable Floor: means one half of one percent (0.50%) per annum for the Applicable Libor Rate.

Applicable Margin: a rate of interest equal to seven and three quarters percent (7.75%) per annum.

Applicable Prepayment Fee: means the following amount, calculated as of the date (the “**Accrual Date**”) that the Applicable Prepayment Fee becomes payable in the case of prepayments required under the Financing Documents or the date any voluntary prepayment is made: (a) for an **Accrual Date** on or after the **Closing Date** through and including the date which is twelve (12) months after the **Closing Date**, three and one half percent (3.50%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); (b) for an **Accrual Date** after the date which is twelve (12) months after the **Closing Date** through and including the date twenty-four (24) months after the **Closing Date**, two and three quarter percent (2.75%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater); and (c) for an **Accrual Date** after the date which is twenty-four (24) months after the **Closing Date** through and including the date immediately preceding the **Maturity Date**, one percent (1.00%) multiplied by the amount of the outstanding principal of the Credit Extension prepaid or required to be prepaid (whichever is greater).

Closed Period: Not applicable.

Commitment Commencement Date: Closing Date.

Commitment Termination Date: the close of the Business Day following the Closing Date.

Minimum Credit Extension Amount: \$7,000,000.00

Permitted Purpose: Not applicable.

AMORTIZATION SCHEDULE

Commencing on the first day of the full calendar month following the twelve (12) month anniversary of the Closing Date (the “**Initial Amortization Start Date**”) and continuing on the first day of each calendar month thereafter, Borrower shall pay to Agent as a principal payment on the Credit Extensions in an amount equal to the total principal amount of the Credit Extensions made to Borrower *divided by* thirty (30), for a thirty (30) month straight-line amortization of equal monthly principal payments; *provided, however*, Borrower may, on any Business Day during the period (a) beginning on the date on which Borrower delivers to Agent evidence reasonably satisfactory to Agent that Borrower has demonstrated in-vitro bioequivalence of its Albuterol sulphate product to Proventil HFA Inhalation Aerosol that is sufficient to file as part of an ANDA and (b) ending on the date that is fifteen days prior to the Initial Amortization Start Date, request in writing that Agent and the Lenders extend the Initial Amortization Start Date (an “**IO Extension Request**”) by three (3) months. If, as of the date of the IO Extension Request and the Initial Amortization Start Date, no Event of Default has occurred and is continuing, then the Initial Amortization Start Date shall be extended by three (3) months such that principal payments shall commence on the first day of the full calendar month following the fifteen (15) month anniversary of the Closing Date and shall be in an amount equal to the then aggregate outstanding principal balance of the Credit Extensions made to Borrower *divided by* twenty-seven (27), for a twenty-seven (27) month straight-line amortization of equal monthly principal payments.

POST-CLOSING OBLIGATIONS SCHEDULE

Borrower shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within thirty (30) days after the Closing Date (or such later date as Agent may agree in its sole discretion), use commercially reasonable efforts to obtain and deliver to Agent the written consent of G&W Laboratories to permit the granting of a security interest in the G&W Background Intellectual Property by Impopharma to the Agent, for the benefit of the Lenders, which such written consent shall be in form and substance reasonably satisfactory to Agent (the “**G&W Consent**”).

Borrower’s failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower’s failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate and automatic Event of Default.

CLOSING DELIVERIES SCHEDULE

1. duly executed signatures to the Financing Documents to which Borrower is a party.
2. duly executed signatures to the Control Agreements with TD Bank, National Association;
3. duly executed original Secured Promissory Notes in favor of each Lender with a face amount equal to such Lender's Applicable Commitment under each Credit Facility, if required by any Lender;
4. the Operating Documents of Borrower and good standing certificates of Borrower (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of Borrower) certified by the Secretary of State or similar entity of the jurisdiction of organization of Borrower as of a date no earlier than thirty (30) days prior to the Closing Date;
5. good standing certificates (or, to the extent applicable, the equivalent thereof in the relevant jurisdiction of organization of Borrower) dated as of a date no earlier than thirty (30) days prior to the Closing Date to the effect that Borrower is qualified to transact business in all states in which the nature of Borrower's business so requires;
6. certified copies, dated as of a recent date, of Lien, bankruptcy, insolvency, judgment, copyright, patent and trademark searches (including in respect of each Canadian Credit Party, searches of the Personal Property Security Act) in each jurisdiction reasonably requested by the Agent with respect to the Credit Parties, as Agent shall request, accompanied by written evidence (including any UCC and/or PPSA termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
7. the Perfection Certificate executed by Borrower;
8. the US Process Agent letter demonstrating compliance with Section 13.19;
9. a legal opinion of Borrower's Canadian and United States counsel dated as of the Closing Date together with the duly executed signatures thereto;
10. evidence satisfactory to Agent that the insurance policies required by Article 6 are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Agent, for the ratable benefit of the Lenders;
11. payment of the fees and expenses of Agent and the Lenders then accrued, including pursuant to the Fee Letters;
12. a duly executed Secretary's Certificate dated as of the Closing Date which includes executed copies of the Borrowing Resolutions;
13. timely receipt by the Agent of an executed disbursement letter;
14. a certificate executed by a Responsible Officer of Borrower, in form and substance satisfactory to Agent, which shall certify as to certain conditions to the funding of the Credit Extensions on the Closing Date;
15. timely receipt by the Lenders of executed Warrants to purchase shares of Borrower's fully registered common stock in an amount equal to three percent (3%) of the aggregate Applicable Commitments of such lender hereunder, divided by the exercise price;
16. (i) all share certificates, transfers and stock transfer forms or equivalent duly executed by Borrower in blank in relation to the assets subject to or expressed to be subject to the Security Documents and other documents of title to be provided under the Security Documents and (ii) all other possessory collateral required to be delivered to Agent with corresponding endorsements pursuant to Section 4.2(b);
17. copies of any Registration Rights Agreement/Investors' Rights Agreement and any amendments thereto; and
18. timely receipt by the Agent of evidence that Borrower has obtained equity financing from existing and/or new investors in an amount not less than \$5,000,000.00, such evidence to be in form and substance satisfactory to Agent.

DISCLOSURE SCHEDULE

Scheduled Collateral Accounts

Bank Name	Account Type	Account Number
The Toronto-Dominion Bank	CAD Money Market	15522-004-5229745
	US Money Market	15522-004-7319129
	CAD Operating Account	17282-004-5227261
	USD Money Market	15522-004-7307732
TD Bank, National Association	USD Operating Account (payroll only)	031201360-4282419774

Scheduled Permitted Liens

Debtor	Secured Party	Collateral	State and Jurisdiction	Filing Date and Number (include original file date and continuations, amendments, etc.)
Impopharma Inc.	Gold Card Leasing O/B Goldcard Inc.	<u>Collateral Classification:</u> Equipment, Other <u>Collateral Description:</u> (4) Alliance HPLC systems complete with all accessories and attachments including XC separations modules, bottle trays, U/V visible detectors, and SQT alliance familu UVS, and software. (as per detailed description on	Province of Ontario	<u>Filing date:</u> September 3, 2015 <u>File number:</u> 709621668 <u>Registration number:</u> 20150903 1053 1873 1216

		invoice #257045466 dated August 14, 2015)		
Impopharma Inc.	Goldlease Limited	<u>Collateral Classification:</u> Equipment, Other <u>Collateral Description:</u> One MDI AS actuation station, one patient actuator adaptor, calibration kit, users guide, MDI AS application software as well as installation and shipping and handling, as well as all accessories, all as per Innovasystems, Inc. Quote number 001839-A.	Province of Ontario	<u>Filing date:</u> May 4, 2012 <u>File number:</u> 678151035 <u>Registration number:</u> 20120504 1911 1793 4498
Impopharma Inc. Dynagon Inc. (added on April 26, 2012)	Goldlease Limited	<u>Collateral Classification:</u> Inventory, Equipment, Other <u>Collateral Description:</u> Used aerosol pilot production plant complete with all attachments and accessories as well as a mini-stage equipment (crimper, filler, spray tester, pump, pipework, table. Mixing Tank, GIUSTI 45L mixing tank, spray tester-	Province of Ontario	<u>Filing date:</u> January 13, 2012 <u>File number:</u> 675633996 <u>Registration number:</u> 20120113 1744 1793 9397 <u>Amendment:</u> Financing change statement registered on April 26, 2012 under number 20120426 1403 1462 2661 to add Dynagon Inc. as an additional debtor.

		sessions of York ID#11-PG0021, crimper, two filler (HFA), filler (active drug), can cleaner, cascade impactor, sartorius balance- PH meter-oak ton ph2100 series, labconco flaskscrubber, heavy duty floor weight scale, barnstead water system ro unit model #D9011-tank #D9021-DI Units D11931 and plymovent miniman-100 extraction arm.		
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Scheduled Permitted Indebtedness

Debtor	Creditor	Amount of Indebtedness outstanding as of July __, 2016	Maturity Date
Nil.			

Scheduled Permitted Investments

Debtor	Type of Investment	Date	Amount Outstanding as of July __, 2016
Nil.			

Material Agreements

1. Development Agreement dated as of September 25, 2012 entered into between Wilshire Pharmaceuticals, Inc. and Impopharma Inc.

2. Master Services Agreement dated May 26, 2015 entered into between Impopharma Inc. and Ei LLC.
3. Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
4. Lease Agreement dated May 3, 2012 entered into between Goldlease Limited and Impopharma Inc.
5. Lease Agreement dated June 23, 2015 entered into between Gold Card Leasing and Impopharma Inc.

Scheduled Litigation

Nil.

Scheduled ownership interest in any Chattel Paper, letter of credit rights, commercial tort claims, Instruments, Documents or investment property

Nil.

INTANGIBLE ASSETS SCHEDULE

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS)				
Borrower that is Owner of IP	Name/Identifier of IP	Type of IP (e.g., patent, TM, ©, mask work)	Registration/Publication or Application Number	Filing Date/Expiration Date
Nil.				

INTANGIBLE ASSETS SCHEDULE (CONTINUED)

MATERIAL LICENSE AGREEMENTS

INBOUND LICENSE # 1	
Name and Date of License Agreement:	Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
Name and address of Licensor:	G&W Laboratories, Inc. 301 Helen Street South Plainfield, NJ 07080-3895

INBOUND LICENSE # 2	
Name and Date of License Agreement:	Master Services Agreement dated May 26, 2015 entered into between Impopharma Inc., and Ei LLC.
Name and address of Licensee:	Ei LLC 2685 N. Cannon Blvd Kannapolis, NC 28083

OUTBOUND LICENSE # 1	
Name and Date of License Agreement:	Development and Commercialization Agreement dated as of June 9, 2016 entered into between G&W Laboratories, Inc. and Impopharma Inc.
Name and address of Licensee:	G&W Laboratories, Inc. 301 Helen Street South Plainfield, NJ 07080-3895

OUTBOUND LICENSE # 2	
Name and Date of License Agreement:	Master Services Agreement dated May 26, 2015 entered into by and between Impopharma Inc., and Ei LLC.
Name and address of Licensee:	Ei LLC 2685 N. Cannon Blvd Kannapolis, NC 28083

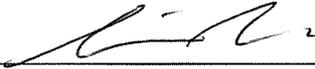
PRODUCTS SCHEDULE

1. Albuterol Sulfate Inhalation HFA Aerosol 120 mcg
2. Beclomethasone Dipropionate HFA Aerosol 40 and 80 mcg
3. Sumatriptan Nasal Spray, 5 and 20 mg
4. Clobetasol Propionate Topical Solution, USP 0.05% (Spray)
5. Ipratropium Bromide HFA Inhalation Aerosol 12.9 g/200 actuations
6. Dihydroergotamine Mesylate Nasal Spray 4 mg/mL

REQUIRED PERMITS SCHEDULE

1. FDA Establishment Number 3003285511.
2. Health Canada Drug Establishment Licence (DEL) #100709.
3. FDA Abbreviated New Drug Application 208967.

This is Exhibit "F" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.

A handwritten signature in black ink, appearing to be 'J. R. ...', written over a horizontal line.

A Commissioner for Taking Affidavits in and for the Province of Ontario

SECURITY AGREEMENT

THIS AGREEMENT made this 8th day of July, 2016,

BETWEEN:

IMPOPHARMA INC.,

a corporation incorporated under the laws of the Province of Ontario,

(hereinafter called the “**Debtor**”),

AND:

MIDCAP FINANCIAL TRUST, as agent for itself and the other Lenders,

a Delaware statutory trust

(hereinafter, together with its successors and assigns, called the “**Secured Party**”),

RECITALS:

- (a) Pursuant to that certain Credit and Security Agreement dated as of even date herewith by and among the Debtor, the other Credit Parties (as defined therein) from time to time parties thereto, the lenders from time to time parties thereto, as lenders (collectively, the “**Lenders**”), and the Secured Party (as the same may be amended, supplemented, modified, increased, renewed or restated from time to time, the “**Credit Agreement**”), the Secured Party and the Lenders have agreed to make available to Borrower (as defined in the Credit Agreement) the loan facilities described in the Credit Agreement.
- (b) It is a condition precedent to the extension of credit to the Debtor under the Credit Agreement that the Debtor execute and deliver this agreement in favour of the Secured Party, as agent for the benefit of the Lenders, as security for the payment and performance of the Debtor’s obligations under the Credit Agreement.
- (c) All capitalized terms used but not defined herein or in the *Personal Property Security Act* (Ontario) (the “**PPSA**”) shall have the meanings given to such terms in the Credit Agreement.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Debtor agrees as follows:

1. Grant of Security Interest

As a general and continuing security for the payment of the Obligations, the Debtor hereby grants to the Secured Party, as agent and for the benefit of the Lenders, a continuing security interest in all of the Debtor's property, assets and undertaking of any kind or nature, now owned or after acquired including, without limitation, the following described property (hereinafter collectively called the "**Collateral**"):

- (a) Accounts: all debts, accounts, claims, monies and choses in action which now are or which may at any time hereafter be due or owing to or owned by the Debtor, and also all securities, bills, notes and other documents now held or owned or which may be hereafter taken, held or owned by the Debtor or anyone on behalf of the Debtor in respect of the said debts, claims, monies and choses in action or any part thereof, and also all books and papers recording, evidencing or relating to such debts, accounts, claims, monies and choses in action or any part thereof (all of the foregoing being hereinafter called the "**accounts**");
- (b) Inventory: all inventory of whatever kind and wherever situated now owned or hereafter acquired or reacquired by the Debtor including all goods, merchandise, raw materials, goods in process, finished goods and other tangible personal property held for sale, lease or resale or furnished or to be furnished under contracts for service or used or consumed in the business of the Debtor, goods used in or procured for packing or shipping (all of the foregoing called the "**inventory**");
- (c) Equipment: all machinery, equipment, goods and other tangible personal property now owned or hereafter acquired or reacquired by the Debtor and not included in subparagraphs (a) and (b) above including, without limiting the generality of the foregoing, machinery, fixtures, furniture, plant, vehicles of any sort or description and all spare parts and accessories installed in or affixed or attached or appertaining to any of the foregoing, and all drawings, specifications, plans and manuals relating thereto (all of which is hereinafter called the "**equipment**");
- (d) Chattel Paper, Instruments, etc.: all present and future agreements made between the Debtor as secured party and others which evidence both a monetary obligation and a security interest in or a lease of specific goods (all of which is herein called the "**chattel paper**");
- (e) Instruments: all present and future bills, notes and cheques (as such are defined pursuant to the *Bills of Exchange Act* (Canada)), and all other writings that evidence a right to the payment of money and are of a type that in the ordinary course of business are transferred by delivery without necessary endorsement or assignment (all of which of the foregoing being hereinafter called "**instruments**");
- (f) Intangibles: all intangible property now owned or hereafter acquired or reacquired by the Debtor and not included in subparagraph (a) above including, without

limiting the generality of the foregoing, all contractual rights, software (including source and object codes), goodwill, patents, trademarks, copyrights and other industrial property (all of which are hereinafter called the “**intangibles**”);

- (g) Leases: all of the Debtor’s right and interest in and to all leases, leasehold interests, tenancies and rights of occupation or possession of real estate or personal property now owned or hereafter held and owned by the Debtor, including all such rights and interests in respect of which the Debtor is landlord or lessor together with the benefit of the covenants, agreements, privileges and rights of the Debtor pertaining to such interests, (all of which are hereinafter called the “**leases**”); provided, however, that the last day of term of any lease is specifically excepted from the security interest created hereby, but the Debtor agrees to stand possessed of such last day in trust for any person acquiring such interest of Debtor;
- (h) Money: all present and future money of the Debtor, whether authorized or adopted by the Parliament of Canada as part of its currency or any foreign government as part of its currency (all of the foregoing being referred to as the “**money**”);
- (i) Documents of Title: all warehouse receipts, bills of lading and other documents of title, whether negotiable or otherwise, now or hereafter owned by the Debtor (all of which is hereinafter called the “**documents of title**”);
- (j) Books, Records, etc.: all books and papers regarding, evidencing or relating to the above mentioned accounts, chattel paper or documents of title, and all securities, bills, notes, instruments, writings and other documents now or hereafter held or owned by the Debtor or anyone on behalf of the Debtor with respect to the above mentioned accounts, chattel paper or documents of title (all of which is hereinafter called the “**records**”);
- (k) Securities: all shares, stocks, warrants, bonds, debentures, debenture stock or other securities now or hereafter owned by the Debtor together with renewals thereof, substitutions therefor, accretions thereto and all rights and claims in respect thereof (all of which is hereinafter called the “**securities**”);
- (l) Real Estate: all real and immovable freehold property, now or hereafter owned or acquired by the Debtor, together with all buildings, erections, improvements and fixtures situate thereupon or used in connection therewith, (all of which is hereinafter called the “**real estate**”);
- (m) Undertaking: all present and future personal property, business and undertaking of the Debtor not being accounts, inventory, equipment, chattel paper, instruments, intangibles, leases, money, documents of title, records and securities (all of which is hereinafter called the “**undertaking**”);

- (n) Scheduled Property: all property specifically described in Schedule "A" hereto (if any); and
- (o) Proceeds: identifiable or traceable personal property in any form derived directly or indirectly from any dealing with the property described in (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m) and (n).

For greater certainty, the security interest created hereby shall be operative as a present, attached, fixed and specific assignment, mortgage and charge of and security interest in any and all of the Collateral now owned by the Debtor and, with respect to any and all of the Collateral acquired by the Debtor after the date hereof, shall be operative as a present, specific assignment, mortgage and charge of and security interest in such Collateral which shall attach as a fixed and specific mortgage and charge of and security interest in such Collateral as of the moment the Debtor acquires any rights or interests therein. The security interest created hereby shall not be interpreted or construed as a floating charge and does not extend to consumer goods (as defined in the PPSA).

Without limiting the generality of the description of Collateral set out above, the Collateral shall include all present and future personal property of the Debtor located on or about or in transit to or from the address of the Debtor and the location set out in the Perfection Certificate and all present and future personal property of the Debtor including without limitation that set out in any Schedule "A" attached hereto (if any). The Debtor agrees to promptly inform the Secured Party in writing of the acquisition by the Debtor of any personal property which is not of the nature or type described herein, and the Debtor agrees to execute and deliver at its own expense from time to time amendments to this agreement or additional security agreements as may be reasonably required by the Secured Party in order that the security interest created hereunder shall attach to such personal property.

The parties acknowledge that value has been given, that the Debtor has rights in the Collateral or the power to transfer the rights in the Collateral to the Secured Party, and the parties have not agreed to postpone the time for attachment of the security interest created hereby.

Notwithstanding the description of Collateral set out above, in accordance with the terms of the Credit Agreement, the Collateral shall not include the Excluded Property (as such term is defined in the Credit Agreement).

2. Scope of Security Interest

- (a) To the extent that an assignment of amounts payable and other proceeds arising under or in connection with, or the grant of a security interest in any agreement, licence, permit or quota of the Debtor would result in the termination of such agreement, licence, permit or quota (each, a "**Restricted Asset**"), the security interest hereby granted with respect to each Restricted Asset will constitute a trust created in favour of the Secured Party, for the benefit of the Lenders, pursuant to which the Debtor holds as trustee all proceeds arising under or in connection with

the Restricted Asset in trust for the Secured Party, for the benefit of the Lenders, on the following basis:

- (i) subject to the Credit Agreement, until the security interest hereby granted is enforceable the Debtor is entitled to receive all such proceeds; and
- (ii) whenever the security interest hereby granted is enforceable, (A) all rights of the Debtor to receive such proceeds cease and all such proceeds will be immediately paid over to the Secured Party for the benefit of the Lenders, and (B) the Debtor will take all actions requested by the Secured Party to collect and enforce payment and other rights arising under the Restricted Asset.

The Debtor will use all commercially reasonable efforts to obtain the consent of each other party to any and all Restricted Assets to the assignment of such Restricted Asset to the Secured Party in accordance with this Agreement. The Debtor will also use all commercially reasonable efforts to ensure that all agreements entered into on and after the date of this Agreement expressly permit assignments of the benefits of such agreements as collateral security to the Secured Party in accordance with the terms of this agreement.

- (b) The security interest hereby granted with respect to trade-marks constitutes a security interest in, and a charge, hypothecation and pledge of, such Collateral in favour of the Secured Party for the benefit of the Lenders, but does not constitute an assignment or mortgage of such Collateral to the Secured Party or any Lender.

3. Debtor's Representations, Warranties and Covenants

The Debtor hereby represents, warrants and agrees with the Secured Party as follows:

- (a) That except for the security interest granted hereby and subject to any Permitted Liens, the Debtor is, or, as to Collateral acquired after the date hereof will be, the owner of the Collateral, free from any adverse lien, security interest or encumbrance, and agrees that it will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein;
- (b) The Debtor will not during the currency of this agreement, without the consent of the Secured Party, give any further or other security agreement covering the Collateral to any party other than the Secured Party and, other than with respect to Permitted Liens, will not cause or permit any financing statement covering the Collateral to be filed in any public office while this agreement remains outstanding, in each case, subject to the provisions of the Credit Agreement;
- (c) The Debtor's chief executive office and principal place of business and the location of the office where it keeps its records respecting the accounts and all other places of business of the Debtor are listed in the Perfection Certificate;

- (d) The Debtor shall furnish to the Secured Party all information requested relating to the Collateral in accordance with the provisions of the Credit Agreement, and the Lender shall be entitled to inspect the Collateral in accordance with the Credit Agreement;
- (e) The Debtor shall from time to time on the Secured Party's request do, make and execute all such financing statements, further assignments, documents, acts, matters and things as may be required by the Secured Party with respect to the Collateral or any part thereof as may be required to give effect to the terms of this agreement;
- (f) The Debtor hereby constitutes and appoints the Secured Party, or any officer or director, if applicable, of the Secured Party, or any receiver appointed by a court of competent jurisdiction or the Secured Party as hereafter set out, the true and lawful attorney of the Debtor, irrevocably grants such attorney with full power of substitution to do, make and execute, upon the occurrence and during the continuance of an Event of Default, all such assignments, documents, acts, matters or things with the right to use the name of the Debtor in accordance with the terms of this agreement;
- (g) The Debtor shall keep the inventory and equipment insured against loss by fire and such other risks in accordance with the provisions of the Credit Agreement;
- (h) The Debtor has full power and authority, corporate or otherwise, to execute, deliver and perform all of its obligations under this agreement;
- (i) The Debtor shall provide notification to the Secured Party promptly of:
 - (i) any change in the information contained herein or in the Schedules hereto relating to the Debtor, its business or Collateral, its addresses or locations of business;
 - (ii) any material loss of or damage to the Collateral; and
 - (iii) any other changes to Collateral for which notice is required under the Credit Agreement.
- (j) The Debtor agrees to deliver to the Secured Party from time to time promptly upon request:
 - (i) any documents of title, instruments, securities and chattel paper constituting, representing or relating to Collateral; and
 - (ii) such information concerning the Collateral, the Debtor and the Debtor's business and affairs as the Secured Party may reasonably request in accordance with the provisions of the Credit Agreement.

- (k) Prior to the occurrence of an Event of Default that is continuing and subject to compliance with the Debtor's covenants contained herein, the Debtor may, possess, operate, collect, use and enjoy and deal with Collateral in the ordinary course of the Debtor's business in any manner not inconsistent with the provisions hereof; provided that the Secured Party shall have such access and inspection rights provided in the Credit Agreement and the Debtor agrees to perform such actions required pursuant to the Credit Agreement;
- (l) Subject to any applicable requirements of the PPSA, all monies collected or received by the Secured Party pursuant to or in exercise of any right it possesses with respect to Collateral shall be applied as required pursuant to the Credit Agreement, all without prejudice to the liability of the Debtor or the rights of the Secured Party hereunder, and any surplus shall be accounted for as required by law;
- (m) That the Collateral does not include any goods which are used or acquired by the Debtor for use primarily for personal, family or household purposes; and
- (n) To pay all expenses, including reasonable solicitors' and receivers' fees and disbursements incurred by the Secured Party or its agents (including any Receiver, as herein defined) in connection with the enforcement of this agreement; including all expenses incurred by the Secured Party or such agents in dealing with other creditors of the Debtor in connection with the establishment and confirmation of the priority of the security interest created hereby; all of which expenses shall be payable forthwith upon demand and shall form part of the Obligations secured hereby.

4. Default by Debtor

Upon the occurrence and continuance of an Event of Default, the security interest hereby granted shall become immediately enforceable and the Lender shall, in addition to the rights and remedies specifically provided herein, have the rights and remedies of a secured party under the PPSA, and:

- (a) The Secured Party may, in addition to any other rights, appoint by instrument in writing a receiver and manager (hereinafter referred to as the "**Receiver**") of all or any part of the Collateral and remove or replace such Receiver from time to time or may institute proceedings in any court of competent jurisdiction for the appointment of such a Receiver. Where the Secured Party is referred to in this agreement the term shall, where the context permits, include any Receiver so appointed and the officers, employees, servants or agents of such Receiver;
- (b) The Debtor will forthwith upon demand assemble and deliver to the Secured Party possession of all of the Collateral at such place as may be specified by the Secured Party. In any event, at its option, the Secured Party may take such steps as it considers necessary or desirable to enter into or obtain possession of all or any part

of the Collateral by any means permitted by law, including proceedings in any court of competent jurisdiction;

- (c) The Secured Party may seize, collect, realize, sell, borrow money on the security of, release to third parties or otherwise deal with the Collateral or any part thereof in such manner, upon such terms and conditions and at such time or times as may seem to it advisable and without notice to the Debtor (except as otherwise required by any applicable Law), and may charge on its own behalf and pay to others reasonable sums for expenses incurred and for services rendered (expressly including legal advices and services, and receivers and accounting fees) in or in connection with seizing, collecting, realizing, borrowing on the security of, selling or obtaining payment of the Collateral, may add the amount of such sums to the indebtedness of the Debtor and all such sums shall be secured hereby;
- (d) At its option, to be notified to the Debtor in the manner provided by the governing statute, the Secured Party may elect to retain all or any part of the Collateral in satisfaction of the Obligations to the extent permitted by applicable Laws;
- (e) The Secured Party shall not be liable or accountable for any failure to seize, collect, realize, sell or obtain payment of the Collateral or any part thereof and shall not be bound to institute proceedings for the purpose of seizing, collecting, realizing or obtaining possession or payment of the same or for the purpose of preserving any rights of the Secured Party the Debtor or any other person, firm or corporation in respect of same;
- (f) The Secured Party may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Collateral to third parties and otherwise deal with the Debtor, debtors of the Debtor, sureties and others and with the Collateral and other securities as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize the Collateral;
- (g) All monies collected or received by the Secured Party in respect of the Collateral will be applied as provided in the Credit Agreement. If the monies collected by or received by the Secured Party in respect of the Collateral are not sufficient to satisfy all Obligations, the Debtor shall remain responsible to the Secured Party for any deficiency, and the Secured Party shall be entitled to claim such amount and all interest and costs associated therewith from the Debtor;
- (h) In the event of the Secured Party taking possession of the said Collateral or any part thereof in accordance with the provisions of this agreement, the Secured Party may exercise and enforce all rights and remedies of a holder of the Collateral as if the Secured Party were the absolute owner including the right to maintain the Collateral on the premises on which the Collateral may then be situate until such time as the Secured Party shall determine in its discretion to remove, sell or otherwise dispose of the Collateral so taken possession or by it as aforesaid;

- (i) To facilitate the realization of the Collateral the Secured Party may carry on or concur in the carrying on of all or any part of the business of the Debtor and may to the exclusion of all others, including the Debtor, enter upon, occupy and use all or any of the premises, buildings, plant and undertaking of or occupied or used by the Debtor and use all or any of the tools, machinery and equipment of the Debtor for such time as the Secured Party sees fit, free of charge, to manufacture or complete the manufacture of any inventory and to pack and ship the finished product, and the Secured Party shall not be liable to the Debtor for any neglect in so doing or in respect of any rent, charges, depreciation or damages in connection with such actions (unless arising from its own violation of law, gross negligence or willful misconduct);
- (j) The Secured Party may, if it deems it necessary for the proper realization of all or any part of the Collateral, pay any encumbrance, lien, claim or charge that may exist or be threatened against the same and in every such case the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Obligations as hereby secured, and shall bear interest at the rate currently charged to the Debtor under the Credit Agreement at the date of payment thereof by the Secured Party;
- (k) If after all the expenses of the Secured Party in connection with the preservation and realization of the Collateral as above described shall have been satisfied and all Obligations shall have been satisfied and paid in full together with interest, any balance of monies in the hands of the Secured Party arising out of the realization of the Collateral, shall be distributed pursuant to the PPSA;
- (l) The Secured Party shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, lease or otherwise dispose of Collateral or to institute any proceedings for such purposes. Furthermore, the Secured Party shall have no obligation to take any steps to preserve rights against prior parties to any instrument or chattel paper, whether Collateral or proceeds and whether or not in the Secured Party's possession and shall not be liable or accountable for failure to do so;
- (m) Unless the Collateral in question is perishable or unless the Secured Party believes on reasonable grounds that the Collateral in question will decline rapidly in value, the Secured Party will give the Debtor such notice of the date, time and place of any public sale or of the date after which any private disposition of Collateral is to be made, as may be required by the PPSA;
- (n) The Receiver shall for all purposes be deemed to be the agent of the Debtor; and
- (o) The Secured Party, in appointing or refraining from appointing a Receiver shall not incur any liability to the Receiver, the Debtor or otherwise.

5. Dealing with Collateral by the Debtor

- (a) Subject to compliance with the Debtor's covenants contained herein, the Debtor in the ordinary course of its business may, prior to the occurrence and continuance of an Event of Default, sell items of inventory, so that the purchaser thereof takes title clear of the security interest hereby created as provided by Subsection 28 (1) of the PPSA, but if such sale results in an account receivable, such account receivable is subject to the security interest hereby created;
- (b) In the event that the Debtor shall collect or receive any of the accounts receivable or shall dispose of and be paid for any of the other Collateral covered by this agreement, all non-cash proceeds of such disposition shall be subject to the security interest hereby created and all accounts receivable or monies so collected or received by the Debtor shall be deposited or directed in accordance with the Credit Agreement.

6. Paramountcy of Credit Agreement

If there exists any inconsistency between the provisions of this agreement and the provision of the Credit Agreement, the provisions of the Credit Agreement will, to the extent of such inconsistency, prevail.

7. Extensions

The Secured Party may grant extensions of time and other indulgences, take and give up security, accept compositions, compound, compromise, settle, grant releases and discharges, refrain from perfecting or maintaining perfection of security interests and otherwise deal with the Debtor, sureties and others and with the Collateral and other security interests as the Secured Party may see fit without prejudice to the liability of the Debtor or the Secured Party's right to hold and realize on the security constituted by this agreement.

8. Notice of Communication

In this agreement, any notice or communication required or permitted to be given under this agreement will be given in accordance with the notice provisions contained in the Credit Agreement.

9. Discharge

If at any time there are no Obligations then outstanding, all commitments of the Lenders under the Credit Agreement have been terminated, then, at the request and at the expense of the Debtor, the Secured Party will cancel and discharge this agreement and the security interests granted in this agreement and the Secured Party will execute and deliver to the Debtor all such documents as are required to effect such discharge and redeliver to the Debtor any Collateral in its possession.

10. Authorization

The Debtor expressly authorizes the Secured Party to provide any and all statements, copies and information as may be requested by any person from the Secured Party pursuant to the provisions of Section 18 of the PPSA.

11. Governing Law; Interpretation

This agreement shall be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. To the extent that they are not inconsistent herewith, the definitions contained in Section 1 of the PPSA shall apply in the interpretation of this agreement.

12. Successors and Assigns

This agreement and everything herein contained shall extend to and bind and may be taken advantage of by the respective successors and assigns of each and every of the parties hereto. This agreement shall be assignable by the Secured Party in accordance with Section 166 below.

13. Receipt

The Debtor hereby acknowledges receipt of a true copy of this agreement.

14. PPSA Filings

It is expressly acknowledged and agreed that for ease of administration, one or more financing statements may be filed pursuant to the PPSA with respect to this agreement.

15. Waiver

To the extent permitted under applicable law, the Debtor hereby waives all rights to receive from the Secured Party a copy of any financing statement, financing change statement or verification statement filed or issued, as the case may be, at any time in respect of this agreement or any amendments hereto.

16. Assignment.

The Secured Party may assign, transfer or grant a security interest in this agreement and the security interests hereby granted in accordance with the Credit Agreement, and the Debtor expressly agrees that the assignee, transferee or secured party, as the case may be, will have all of the Secured Party's rights and remedies under this agreement and the Debtor will not assert any defence, cross-claim, counterclaim, right of set-off or otherwise any claim which the Debtor now has or hereafter acquires against the Secured Party in any action commenced by any such assignee, transferee or secured party, as the case may be, and will pay the Obligations to the assignee, transferee or secured party, as the case may be, as the Obligations become due.

17. Amendment

This agreement may only be amended, supplemented or otherwise modified by written

agreement executed by the Secured Party and the Debtor.

18. English Language

The parties hereto declare that it is their wish that this agreement and the documents related thereto be in the English language only. Les parties aux presentes declarent vouloir que la presente convention, ainsi que les documents qui s'y rattachent, soient rediges en langue anglaise seulement.

IN WITNESS WHEREOF the Debtor has executed this agreement, the day and year first above written.

IMPOPHARMA INC.

Per: 
Name: Vien Brewster
Title: Vice President , Finance and Secretary

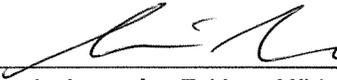
I have authority to bind the Corporation.

SCHEDULE "A"

SCHEDULED ASSETS

None

This is Exhibit "G" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.



A Commissioner for Taking Affidavits in
and for the Province of Ontario

PLEDGE AGREEMENT

This **PLEDGE AGREEMENT** (this “**Agreement**”) is made as of July 8, 2016 by and among **IMPOHARMA INC.** a corporation validly existing under the *Business Corporations Act* (Ontario) (together with any other Person that joins this Pledge Agreement as a Pledgor, each a “**Pledgor**”, and collectively, “**Pledgors**”), and **MIDCAP FINANCIAL TRUST**, as administrative agent (in such capacity, together with its successors and assigns, “**Agent**”) for itself and the other Lenders (as defined herein).

RECITALS

A. Pursuant to that certain Credit and Security Agreement dated as of even date herewith by and among the Pledgors, Impopharma U.S., Inc., a Delaware corporation, the other Credit Parties (as defined therein) from time to time parties thereto, the lenders from time to time parties thereto, as lenders (collectively, the “**Lenders**”), and Agent (as the same may be amended, supplemented, modified, increased, renewed or restated from time to time, the “**Credit Agreement**”), Agent and the Lenders have agreed to make available to Borrowers (as defined in the Credit Agreement) term loan facilities in an aggregate principal amount of up to \$7,000,000 and each Credit Party, including each Pledgor, has granted a security interest in certain of its assets to Agent to secure the Obligations.

B. To induce Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to extend to Borrowers the financial accommodations set forth in the Credit Agreement, Pledgors have agreed to enter into this Agreement. Each Pledgor acknowledges that without this Agreement, the Lenders would be unwilling to make the Credit Extensions and other financial accommodations provided for in the Credit Agreement.

C. The terms and provisions of the Credit Agreement are hereby incorporated by reference in this Agreement. Capitalized terms used in this Agreement but not defined herein shall have the meanings ascribed to them in the Credit Agreement.

AGREEMENT

NOW, THEREFORE, to induce Agent and the Lenders to enter into the Credit Agreement and to make the Credit Extensions, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgors and Agent hereby incorporate by this reference the foregoing Recitals and hereby covenant and agree as follows:

1. Certain Definitions.

As used above and elsewhere in this Agreement, the following terms shall have the following meanings:

(a) “**Issuer**” shall mean and include each corporation, limited liability company, partnership and other organization listed on Schedule I hereto and every other issuer, if any, of Pledged Collateral hereafter.

(b) “**Equity Interests**” means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

(c) “**Pledged Collateral**” shall mean and include, with respect to Pledgors, (i) all of the Equity Interests of each Subsidiary owned by Pledgors and (ii) all of the Equity Interests of each other Person owned by Pledgors, each as listed on Schedule I under the heading “Pledged Collateral” (as such schedule may be amended or supplemented from time to time) and the certificates, if any, representing such Equity Interests and any interest owned by Pledgors on the books and records of the Issuer of such Equity Interest or on the books and records of any securities intermediary pertaining to such Equity Interests and all dividends, distributions, cash, warrants, rights, options, instruments, securities and other property or proceeds at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Equity Interests.

2. Grant of Assignment and Security Interest. Each Pledgor hereby pledges, assigns and grants to Agent, for the benefit of itself and the Lenders, as security for the Obligations, a continuing security interest in, and pledges to Agent, for the ratable benefit of the Lenders, the Pledged Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

3. Registration of Pledge in Books of Issuer; Application of Proceeds. Each Pledgor hereby authorizes and directs each Issuer, as applicable, to register such Pledgor’s pledge to Agent, for its benefit and the benefit of the Lenders, of the Pledged Collateral on the books of the applicable Issuer and, following written notice to do so by Agent after the occurrence and during the continuance of an Event of Default under the Credit Agreement, to make direct payment to Agent of any amounts due or to become due to such Pledgor with respect to the Pledged Collateral. Any moneys received by Agent shall be applied to the Obligations in such order and manner of application as set forth in the Credit Agreement.

4. Rights of Pledgors in the Pledged Collateral. Until an Event of Default occurs and is continuing, each Pledgor shall be entitled to exercise all voting rights and to receive all dividends and other distributions that may be paid on any of its Pledged Collateral and that are not otherwise prohibited by the Financing Documents. Any cash dividend or distribution payable in respect of the Pledged Collateral that is made in violation of this Agreement or the Financing Documents shall be received by any such Pledgor in trust for Agent, for its benefit and the benefit of the Lenders, shall be paid immediately to Agent and shall be retained by Agent as part of the Pledged Collateral. Upon the occurrence and during the continuation of an Event of Default, Pledgors shall, at the written direction of Agent, immediately send a written notice to each Issuer instructing such Issuer, and shall cause such Issuer, to remit all cash and other distributions payable with respect to the Pledged Collateral (until such time as Agent notifies Pledgors that such Event of Default has ceased to exist) directly to Agent. Nothing contained in this paragraph shall be deemed to permit the payment of any sum or the making of any distribution which is prohibited by any of the Financing Documents, if any.

5. Representations and Warranties of Pledgors. Each Pledgor hereby represents and warrants to Agent as follows:

(a) Schedule I and the list of such Pledgor information attached hereto as Schedule II are true, correct and complete in all respects;

(b) All of the Pledged Collateral of each Pledgor that is in certificated form, is registered in the name of such Pledgor by the applicable Issuer;

(c) As of the Closing Date, all of the Pledged Interests of each Pledgor are either (i) not (A) dealt in or traded on securities exchanges or in securities markets, (B) deemed to be investment company securities, (C) held by such Pledgor in a securities account or (D) subject to a control agreement

with (x) the Issuer of such Pledged Interest or (y) a securities intermediary relating to such Pledged Interest or (ii) under the control (for purposes of Article 8 and 9 of the Code, to the extent applicable) of Agent, and such Pledgor has taken all action necessary to grant Agent control (for purposes of Article 8 and 9 of the Code, to the extent applicable) of such Pledged Interests. In addition, as of the Closing Date, none of the Pledged Interests, or any agreements governing any of the Pledged Interests, provides that such Pledged Interests are securities governed by Article 8 of the Uniform Commercial Code as in effect in any relevant jurisdiction, to the extent applicable, whether as a result of actions by any Issuer thereof or otherwise;

(d) The Pledged Collateral constitutes at least the percentage of all the issued and outstanding Equity Interests of each such Issuer as set forth on Schedule I;

(e) The items listed as Pledged Collateral on Schedule I constitute the only Equity Interests in which Pledgors have any rights;

(f) All certificates evidencing the Pledged Collateral of Pledgors have been delivered to Agent;

(g) Pledgors have good and, to the extent applicable, marketable title to the Pledged Collateral. Pledgors are the sole owners of all of the Pledged Collateral, free and clear of all security interests, pledges, voting trusts, agreements, liens, claims and encumbrances whatsoever, other than Permitted Liens;

(h) No Pledgor has heretofore transferred, pledged, assigned or otherwise encumbered any of their rights in or to the Pledged Collateral;

(i) Other than a requirement of consent of the board of directors, board of managers or similar governing body contained in the Operating Documents governing any of the Pledged Collateral (which such consent has been obtained, if any), Pledgors are not prohibited under any agreement with any other person or entity, or under any judgment or decree, from the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(j) No action has been brought or threatened that might prohibit or interfere with the execution and delivery of this Agreement or the performance or discharge of the obligations, duties, covenants, agreements, and liabilities contained in this Agreement;

(k) Pledgors have full power and authority to execute and deliver this Agreement, and the execution and delivery of this Agreement do not conflict with any agreement to which any Pledgor is a party or any law, order, ordinance, rule, or regulation to which any Pledgor is subject or by which it is bound and do not constitute a default under any agreement or instrument binding upon any Pledgor; and

(l) This Agreement has been properly executed and delivered and constitutes the valid and legally binding obligation of each Pledgor and is fully enforceable against each Pledgor in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

6. Covenants of Pledgors. Each Pledgor hereby covenants and agrees as follows:

(a) To do or cause to be done all things necessary to preserve and to keep in full force and effect their interest in the Pledged Collateral, and to defend, at each Pledgor's sole expense, as applicable, the title to the Pledged Collateral and any part of the Pledged Collateral;

(b) To cooperate fully with Agent's efforts to preserve the Pledged Collateral and to take such actions to preserve the Pledged Collateral as Agent may in good faith direct;

(c) To cause each Issuer to maintain proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to the Pledged Collateral and which reflect the lien of Agent on the Pledged Collateral;

(d) To deliver immediately to Agent any certificates that may be issued following the date of this Agreement representing the Pledged Collateral, and to execute and deliver to Agent one or more transfer powers, substantially in the form of Schedule III attached hereto or otherwise in form and content satisfactory to Agent, pursuant to which such Pledgor assigns, in blank, all Pledged Collateral (the "**Transfer Powers**"), which Transfer Powers shall be held by Agent as part of the Pledged Collateral;

(e) To execute and deliver to Agent such financing statements as Agent may request with respect to the Pledged Collateral, and to take such other steps as Agent may from time to time reasonably request to perfect Agent's security interest in the Pledged Collateral under applicable law;

(f) Except as permitted by the Credit Agreement, not to sell, discount, allow credits or allowances, assign, extend the time for payment on, convey, lease, assign, transfer or otherwise dispose of the Pledged Collateral or any part of the Pledged Collateral;

(g) After the occurrence and during the continuation of an Event of Default, not to receive any dividend or distribution or other benefit with respect to any Issuer, and not to vote, consent, waive or ratify any action taken, that would violate or be inconsistent with any of the terms and provisions of this Agreement or any of the Financing Documents, or that would materially impair the position or interest of Agent in the Pledged Collateral or dilute the Pledged Collateral;

(h) Not to create, incur, assume or suffer to exist any Lien upon any of the Pledged Collateral, other than Permitted Liens;

(i) Such Pledgor will, upon obtaining ownership of any other Pledged Collateral otherwise required to be pledged to Agent, for its benefit and the benefit of the Lenders, pursuant to any of the Financing Documents, within fifteen (15) Business Days of obtaining ownership, deliver to Agent a Pledge Amendment, duly executed by Pledgor, in substantially the form of Schedule IV hereto (a "**Pledge Amendment**") in respect of any such additional Pledged Collateral pursuant to which such Pledgor shall pledge to Agent, for its benefit and the benefit of the Lenders, all of such additional Pledged Collateral. Prior to the delivery thereof to Agent, all such additional Pledged Collateral shall be held by Pledgors separate and apart from its other property and in express trust for Agent, for its benefit and the benefit of the Lenders;

(j) Such Pledgor consents to the admission of Agent (and its assigns or designee) as a member, partner or stockholder of each Issuer, as applicable, upon Agent's realization upon any of the Pledged Collateral;

(k) All of the Pledged Collateral of such Pledgor that is in certificated form, will continue to be registered in the name of such Pledgor by the applicable Issuer; and

(l) All of the Pledged Interests of such Pledgor, (i) shall not be (A) dealt in or traded on securities exchanges or in securities markets, (B) deemed to be investment company securities, (C) held by such Pledgor in a securities account and (D) subject to a control agreement with (x) the Issuer of such Pledged Interest or (y) a securities intermediary relating to such Pledged Interest or (ii) shall be under the control (for purposes of Article 8 and 9 of the Code, to the extent applicable) of Agent, and such Pledgor shall take all action necessary to grant Agent control (for purposes of Article 8 and 9 of the Code, to the extent applicable) of such Pledged Interests.

7. Rights of Agent. Agent may from time to time and at its option (a) require each Pledgor to, and each Pledgor shall, periodically deliver to Agent records and schedules, which show the status of the Pledged Collateral and such other matters which affect the Pledged Collateral; (b) verify the Pledged Collateral and inspect the books and records of each Issuer and make copies of or extracts from the books and records in accordance with the terms of Section 6.2(c) of the Credit Agreement; and (c) notify any prospective buyers or transferees of the Pledged Collateral of Agent's interest in the Pledged Collateral. Each Pledgor agrees that Agent may at any time take such steps as Agent deems reasonably necessary to protect Agent's interest in and to preserve the Pledged Collateral. Each Pledgor hereby consents and agrees that Agent may at any time or from time to time pursuant to the Credit Agreement (a) extend or change the time of payment and/or the manner, place or terms of payment of any and all Obligations, (b) supplement, amend, restate, supersede, or replace the Credit Agreement or any other Financing Documents, (c) renew, extend, modify, increase or decrease loans and extensions of credit under the Credit Agreement, (d) modify the terms and conditions under which loans and extensions of credit may be made under the Credit Agreement, (e) settle, compromise or grant releases for any Obligations and/or any person or persons liable for payment of any Obligations, (f) exchange, release, surrender, sell, subordinate or compromise any collateral of any party now or hereafter securing any of the Obligations and (g) apply any and all payments received from any source by Agent at any time against the Obligations as set forth in the Credit Agreement; all of the foregoing in such manner and upon such terms as Agent may determine and without notice to or further consent from any Pledgor and without impairing or modifying the terms and conditions of this Agreement which shall remain in full force and effect.

This Agreement shall remain in full force and effect and shall not be limited, impaired or otherwise affected in any way by reason of (i) any delay in making demand on any Pledgor for or delay in enforcing or failure to enforce, performance or payment of any Obligations, (ii) any failure, neglect or omission on Agent's part to perfect any lien upon, protect, exercise rights against, or realize on, any property of any Pledgor or any other party securing the Obligations, (iii) any failure to obtain, retain or preserve, or the lack of prior enforcement of, any rights against any person or persons or in any property, (iv) the invalidity or unenforceability of any Obligations or rights in any Pledged Collateral under the Credit Agreement, (v) the existence or nonexistence of any defenses which may be available to any Pledgor with respect to the Obligations, or (vi) the commencement of any bankruptcy, reorganization, liquidation, dissolution or receivership proceeding or case filed by or against any Pledgor or any Borrower.

8. Rights of Agent Following Event of Default. Upon the occurrence and continuation of an Event of Default, Agent may, at its option, without notice to any Pledgor or any other party, do any one or more of the following:

(a) Exercise any and all of its rights and remedies under the Financing Documents, including declaring any unpaid balance of the Obligations to be immediately due and payable (the

occurrence or nonoccurrence of an Event of Default shall in no manner impair the ability of Agent to demand payment of any portion of the Obligations that is payable upon demand);

(b) Proceed to perform or discharge any and all of each Pledgor's obligations, duties, responsibilities or liabilities and exercise any and all of its rights in connection with the Pledged Collateral for such period of time as Agent may deem appropriate, with or without the bringing of any legal action in or the appointment of any receiver by any court;

(c) Do all other acts which Agent may deem necessary or proper to protect Agent's security interest in the Pledged Collateral and carry out the terms of this Agreement;

(d) Exercise all voting and management rights of the Pledgors as to each Issuer, as applicable, or otherwise pertaining to the Pledged Collateral, and each Pledgor, forthwith upon the request of Agent, shall use its best efforts to secure, and cooperate with the efforts of Agent to secure (if not already secured by Agent), all the benefits of such voting and management rights.

(e) Sell the Pledged Collateral in any manner permitted by the Code, and upon any such sale of the Pledged Collateral, Agent may (i) bid for and purchase the Pledged Collateral and apply the expenses of such sale (including, without limitation, attorneys' fees) as a credit against the purchase price, or (ii) apply the proceeds of any sale or sales to other persons or entities, in accordance with the terms of the Credit Agreement, to the expenses of such sale (including, without limitation, attorneys' fees), to the Obligations, and the remainder, if any, shall be paid to Pledgors or to such other person or entity legally entitled to payment of such remainder; and

(f) Proceed by suit or suits in law or in equity or by any other appropriate proceeding or remedy to enforce the performance of any term, covenant, condition, or agreement contained in this Agreement, and institution of such a suit or suits shall not abrogate the rights of Agent to pursue any other remedies granted in this Agreement or to pursue any other remedy available to Agent either at law or in equity.

Agent shall have all of the rights and remedies of a secured party under the Code and other applicable laws. All costs and expenses, including reasonable attorneys' fees and expenses, incurred or paid by Agent in exercising or protecting any interest, right, power or remedy conferred by this Agreement, shall bear interest at a per annum rate of interest equal to the then highest rate of interest charged on any of the Obligations from the date of payment until repaid in full and shall, along with the interest thereon, constitute and become a part of the Obligations secured by this Agreement.

Each Pledgor hereby constitutes Agent as the attorney-in-fact of such Pledgor after an Event of Default has occurred and is continuing and to take such actions and execute such documents as Agent may deem appropriate in the exercise of the rights and powers granted to Agent in this Agreement, including, but not limited to, filling-in blanks in each Transfer Power to cause a transfer of any or all of the Pledged Collateral pursuant to a sale of such Pledged Collateral. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment in full of the Obligations. Each Pledgor shall indemnify and hold Agent harmless for all losses, costs, damages, fees, and expenses suffered or incurred in connection with the exercise of this power of attorney and each Pledgor shall release Agent from any and all liability arising in connection with the exercise of this power of attorney, except that such Pledgor shall have no obligation hereunder to Agent with respect to any liability resulting from bad faith, gross negligence or willful misconduct of Agent, as determined by a final non-appealable judgment of a court of competent jurisdiction.

9. Performance by Agent. If any Pledgor shall fail to perform, observe or comply with any of the conditions, terms, or covenants contained in this Agreement or any of the other Financing Documents, Agent, without notice to or demand upon any Pledgor and without waiving or releasing any of the Obligations or after any Event of Default, may (but shall be under no obligation to) at any time thereafter perform such conditions, terms or covenants for the account and at the expense of Pledgors, and may enter upon the premises of Pledgors (subject to any applicable landlord's agreement) for that purpose and take all such action on the premises as Agent may consider necessary or appropriate for such purpose; *provided* that, so long as no Event of Default has occurred and is continuing, Agent has provided not less than three (3) Business Days' prior written notice to Pledgor to perform, observe or comply with such conditions terms or covenants and Pledgor has failed to take such action. All sums paid or advanced by Agent in connection with the foregoing and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the foregoing, together with interest thereon at a per annum rate of interest equal to the then highest rate of interest charged on the principal of any of the Obligations, from the date of payment until repaid in full, shall be paid by Pledgors to Agent on demand and shall constitute and become a part of the Obligations secured by this Agreement.

10. Indemnification. Agent shall not in any way be responsible for the performance or discharge of, and Agent does not hereby undertake to perform or discharge of, any obligation, duty, responsibility, or liability of Pledgors in connection with the Pledged Collateral or otherwise. Pledgors hereby agree to indemnify Agent in accordance with Section 13.2 of the Credit Agreement.

11. Termination. Upon payment in full of the Obligations, and termination of any further obligation of Agent and Lenders to extend any credit to Borrowers under the Financing Documents, this Agreement shall terminate and Agent shall promptly execute appropriate documents to evidence such termination and, upon Pledgor's request, return to Pledgors any Pledged Collateral in its possession.

12. Release. Without prejudice to any of Agent's rights under this Agreement, Agent may take or release other security for the payment or performance of the Obligations, may release any party primarily or secondarily liable for the Obligations, and may apply any other security held by Agent to the satisfaction of the Obligations.

13. Pledgors' Liability Absolute. Each Pledgor's liability under this Agreement shall be direct and immediate and not conditional or contingent upon the pursuit of any remedies against such Pledgor or any other person, nor against other securities or liens available to Agent or Agent's respective successors, assigns, or agents. Each Pledgor waives any and all rights to require that resort be had to any security or to any balance of any deposit account or credit on the books of Agent in favor of any other person.

14. Preservation of Pledged Collateral. Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral and in preserving rights under this Agreement if Agent takes action for those purposes as Pledgors may reasonably request in writing, *provided, however*, that failure to comply with any such request shall not, in and of itself, be deemed a failure to exercise reasonable care, and no failure by Agent to preserve or protect any rights with respect to the Pledged Collateral or to do any act with respect to the preservation of the Pledged Collateral not so requested by a Pledgor shall be deemed a failure to exercise reasonable care in the custody or preservation of the Pledged Collateral.

15. Private Sale. Each Pledgor recognizes and acknowledges that Agent may be unable to effect a public sale of the Pledged Collateral by reason of certain provisions contained in the federal Securities Act of 1933, as amended, and applicable state securities laws and, under the circumstances then existing, may reasonably resort to a private sale to a restricted group of purchasers who will be obliged to

agree, among other things, to acquire the Pledged Collateral for their own account for investment and not with a view to the distribution or resale of the Pledged Collateral. Each Pledgor agrees that a private sale so made may be at a price and on other terms less favorable to the seller than if the Pledged Collateral were sold at public sale and that Agent has no obligation to delay sale of the Pledged Collateral for the period of time necessary to permit any Pledgor, even if such Pledgor would agree to register or qualify the Pledged Collateral for public sale under the Securities Act of 1933, as amended, and applicable state securities laws. Each Pledgor agrees that a private sale made under the foregoing circumstances and otherwise in a commercially reasonable manner shall be deemed to have been made in a commercially reasonable manner under the Code.

16. General.

(a) Final Agreement and Amendments. This Agreement, together with the other Financing Documents, constitutes the final and entire agreement and understanding of the parties and any term, condition, covenant or agreement not contained herein or therein is not a part of the agreement and understanding of the parties. Neither this Agreement, nor any term, condition, covenant or agreement hereof may be changed, waived, discharged or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

(b) Waiver. No party hereto shall be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and, without limiting the generality of the foregoing, no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made in any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right. No single or partial exercise of any power or right shall preclude other or further exercise of the power or right or the exercise of any other power or right. No course of dealing between the parties hereto shall be construed as an amendment to this Agreement or a waiver of any provision of this Agreement. No notice to or demand on any Pledgor in any case shall thereby entitle such Pledgor to any other or further notice or demand in the same, similar or other circumstances.

(c) Headings. The headings of the Sections, subsections, paragraphs and subparagraphs hereof are provided herein for and only for convenience of reference, and shall not be considered in construing their contents.

(d) Construction.

(1) As used herein, all references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, and (iii) to any Section, subsection, paragraph or subparagraph shall, unless therein expressly indicated to the contrary, be deemed to have been made to such Section, subsection, paragraph or subparagraph of this Agreement. The Recitals are incorporated herein as a substantive part of this Agreement and the parties hereto acknowledge that such Recitals are true and correct.

(2) The security interest is granted in conjunction with the security interest granted to Agent, for the ratable benefit of the Lenders, under the Credit Agreement. The rights and remedies of Agent with respect to the security interest granted hereby are in addition to those set forth in the Credit Agreement and the other Financing Documents, and those which are now or hereafter available to Agent as a matter of law or equity. Each right, power and remedy of Agent provided for herein or in the Credit Agreement or any of the Financing Documents, or now

or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Agent of any one or more of the rights, powers or remedies provided for in this Agreement, the Credit Agreement or any of the other Financing Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Agent, of any or all other rights, powers or remedies. In the event of any conflict between any provision in this Agreement and a provision in the Credit Agreement, such provision of the Credit Agreement shall control.

(e) Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns hereunder to the extent such successors and assigns are permitted under the Credit Agreement. In the event of any assignment or transfer by Agent of any of any Pledgor's obligations under the Financing Documents or the collateral therefor as permitted under the Credit Agreement, Agent thereafter shall be fully discharged from any responsibility with respect to such collateral so assigned or transferred, but Agent shall retain all rights and powers given by this Agreement with respect to any of any Pledgor's obligations under the Financing Documents or collateral not so assigned or transferred. No Pledgor shall have any right to assign or delegate its rights or obligations hereunder without the prior written consent of Agent (which may be granted or withheld in Agent's discretion).

(f) Severability. If any term, provision, covenant or condition of this Agreement or the application of such term, provision, covenant or condition to any party or circumstance shall be found by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Agreement and the application of such term, provision, covenant, or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, provision, covenant or condition shall be valid and enforced to the fullest extent permitted by law.

(g) Notices. All notices required or permitted hereunder shall be given and shall become effective as provided in Article 11 of the Credit Agreement. All notices to Pledgors shall be addressed in accordance with the information provided on the signature page hereto.

(h) Reserved.

(i) Time of the Essence; Survival; Joint and Several Liability. Time is of the essence of this Agreement and each and every term, covenant and condition contained herein. All covenants, agreements, representations and warranties made in this Agreement or in any of the other Financing Documents shall continue in full force and effect so long as any of the Obligations remain outstanding. Each person or entity constituting a Pledgor shall be jointly and severally liable for all of the obligations of Pledgors under this Agreement.

(j) Further Assurances. Each Pledgor hereby agrees that at any time and from time to time, at the expense of such Pledgor, such Pledgor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Agent may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby, or to enable Agent or any of its agents to exercise and enforce its rights and remedies under this Agreement with respect to any portion of such collateral.

(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which shall constitute one in the same instrument. This Agreement may be executed and delivered by the signing and delivery of this

Agreement with original signatures or by facsimile or pdf copy. As used in this Agreement, the term "this Agreement" shall include all attachments, exhibits, schedules, riders and addenda.

(l) Costs. Pledgors shall be responsible for the payment of any and all reasonable fees, costs and expenses which Agent may incur by reason of this Agreement, including, but not limited to, the following: (i) any taxes of any kind related to any property or interests assigned or pledged hereunder; (ii) expenses incurred in filing public notices relating to any property or interests assigned or pledged hereunder; and (iii) any and all costs, expenses and fees (including, without limitation, reasonable attorneys' fees and expenses and court costs and fees), whether or not litigation is commenced, incurred by Agent in protecting, insuring, maintaining, preserving, attaching, perfecting, enforcing, collecting or foreclosing upon any Lien, security interest, right or privilege granted to Agent or any obligation of Pledgors under this Agreement, whether through judicial proceedings or otherwise, or in defending or prosecuting any actions or proceedings arising out of or related to this Agreement or any property or interests assigned or pledged hereunder.

(m) No Defenses. Each Pledgor's obligations under this Agreement shall not be subject to any set-off, counterclaim or defense to payment that such Pledgor now has or may have in the future.

(n) Advances of Proceeds of the Credit Extension. Agent shall be entitled to honor any request made by Borrower for advances of Credit Extension proceeds and shall have no obligation to see to the proper disposition of such advances. Each Pledgor agrees that its obligations hereunder shall not be released or affected by reason of any improper disposition by Borrower of such Credit Extension proceeds.

(o) **CHOICE OF LAW; CONSENT TO JURISDICTION.** THIS AGREEMENT AND THE RIGHTS, REMEDIES AND OBLIGATIONS OF THE PARTIES HERETO, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES AND ALL OTHER MATTERS RELATING HERETO OR ARISING HEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS. NOTWITHSTANDING THE FOREGOING, AGENT AND LENDERS SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH AGENT AND LENDERS (IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION 16(o)) DEEM NECESSARY OR APPROPRIATE TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE AGENT'S AND LENDERS' RIGHTS AGAINST PLEDGORS OR THEIR PROPERTY. EACH PLEDGOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF MARYLAND AND ANY SUCH OTHER JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PLEDGOR HEREBY WAIVES ANY OBJECTION THAT IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PLEDGOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINTS, AND OTHER PROCESS ISSUED IN SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS, AND OTHER PROCESS MAY BE MADE BY REGISTERED OR

CERTIFIED MAIL ADDRESSED TO SUCH PLEDGOR AT THE ADDRESS SET FORTH IN ARTICLE 11 OF THE CREDIT AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER TO OCCUR OF SUCH PLEDGOR'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.

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

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties has caused this Agreement to be executed as of the day and year first above mentioned.

PLEDGORS:

IMPOPHARMA INC.

By:  (SEAL)
Name: Vien Brewster
Title: Vice President, Finance and Secretary

Pledgor Contact Information:

Impopharma, Inc.
255 Spinnaker Way, Unit 6
Concord, Ontario, Canada L4K 4J1
Attention: Christine Mundkur
Fax: (905) 760-0235
E-Mail: cmundkur@impopharma.com

With a copy to:

Stikeman Elliott LLP
1155 René-Lévesque Blvd. West
Montreal, Quebec H3B 3V2 Canada
Attn: Gayle Noble
Phone: (514) 397-3205
Fax: (514) 397-3605
Email: gnoble@stikeman.com

[Signatures Continue on Following Page]

ACKNOWLEDGED AND AGREED:

IMPOPHARMA US, INC. (as Issuer)

By:  (SEAL)
Name: Vien Brewster
Title: Vice President, Finance

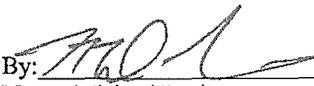
[Signatures Continue on Following Page]

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By:  _____ (SEAL)
Name: Michael Levin
Title: Authorized Signatory

[End of Signature Pages]

SCHEDULE I

PLEGDED COLLATERAL

Name of Pledgor: Impopharma Inc.
Issuer Name: Impopharma US, Inc.
Type of Entity of Issuer: Corporation
Jurisdiction of Organization of Issuer: Delaware
Organizational ID No. of Issuer: 5337951
Tax ID No. of Issuer: 33-1228440
Class of Interests in Issuer: Common Stock
Equity Interest Certificate No.: 1
Number of Units: 100
Percentage of Outstanding Equity Interest: 100%

SCHEDULE II

PLEDGOR INFORMATION

Name of Pledgor: Impopharma Inc.

Type of Entity of Pledgor: Corporation

Jurisdiction of Organization of Pledgor: Ontario

Organizational ID No. of Pledgor: 1214417 (Ontario Corporation Number)

Tax ID No. of Pledgor: 88580 9566 RC0001 (Federal Employer Identification)

SCHEDULE III

STOCK POWER

FOR VALUE RECEIVED, the undersigned, _____,
_____ (**"Pledgor"**), does hereby sell, assign and transfer to
_____ * all of its Equity Interests (as hereinafter defined) represented
by Certificate No(s). _____ in _____, a _____ [**limited
liability company/corporation/other**] (**"Issuer"**), standing in the name of Pledgor on the books of said
Issuer. Pledgor does hereby irrevocably constitute and appoint _____*,
as attorney, to transfer the Equity Interest in said Issuer with full power of substitution in the premises.
The term **"Equity Interest"** means any security, share, unit, partnership interest, membership interest,
ownership interest, equity interest, option, warrant, participation, "equity security" (as such term is
defined in Rule 3(a)11 1 of the General Rules and Regulations of the Securities Exchange Act of 1934, as
amended, or any similar statute then in effect, promulgated by the Securities and Exchange Commission
and any successor thereto) or analogous interest (regardless of how designated) of or in a corporation,
partnership, limited partnership, limited liability company, limited liability partnership, business trust or
other entity, of whatever nature, type, series or class, whether voting or nonvoting, certificated or
uncertificated, common or preferred, and all rights and privileges incident thereto.

Dated: _____ *

PLEDGOR:

[NAME OF PLEDGOR]

By: _____

Name: _____

Its: _____

*To Remain Blank - Not Completed at Closing

SCHEDULE IV

PLEDGE AMENDMENT

This Pledge Amendment, dated _____, 201__ is delivered pursuant to Section 6(i) of the Pledge Agreement referred to below. All defined terms herein shall have the meanings ascribed thereto or incorporated by reference in the Pledge Agreement. The undersigned hereby certifies that the representations and warranties in Section 5 of the Pledge Agreement are and continue to be true and correct, both as to the Pledged Collateral pledged prior to this Pledge Amendment and as to the Pledged Collateral pledged pursuant to this Pledge Amendment. The undersigned further agrees that this Pledge Amendment may be attached to that certain Pledge Agreement, dated July 8, 2016, between undersigned, as a Pledgor and Midcap Financial Trust, as Agent (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Pledge Agreement**"), and that the Pledged Collateral listed on this Pledge Amendment shall be and become a part of the Pledged Collateral referred to in said Pledge Agreement and shall secure all Obligations referred to and in accordance with said Pledge Agreement. Schedule I of the Pledge Agreement shall be deemed amended to include the Pledged Collateral listed on this Pledge Amendment. The undersigned acknowledges that any Pledged Collateral issued by Issuer and owned by Pledgor but not included in Schedule IV hereto or already listed as Pledged Collateral on Schedule I of the Pledge Agreement, at the sole discretion of Agent, may not otherwise be pledged by Pledgor to any other Person or otherwise used as security for any obligations other than the Obligations.

PLEDGOR:

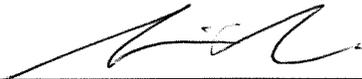
[NAME OF PLEDGOR]

By: _____
Name: _____
Its: _____

SCHEDULE IV- continued

<u>Name and Address of Pledgor</u>	<u>Issuer</u>	<u>Class of Equity Interest</u>	<u>Certificate Number(s)</u>	<u>Number of Shares</u>
	<u>Initial Principal Amount</u>	<u>Issue Date</u>	<u>Maturity Date</u>	<u>Interest Rate</u>

This is Exhibit "H" referred to in the Affidavit of Theron E. Odlaug made before me on this 26 day of July, 2018.

A handwritten signature in black ink, appearing to be 'J. S. C.', written over a horizontal line.

A Commissioner for Taking Affidavits in
and for the Province of Ontario

CONFIDENTIAL

Exhibit H

Filed under confidential seal.

This is Exhibit "I" referred to in the Affidavit of Theron E. Odlaug made before me on this 26th day of July, 2018.



A Commissioner for Taking Affidavits in
and for the Province of Ontario

[Letterhead]

STRICTLY PRIVATE AND CONFIDENTIAL

●, 2018

●

Dear ●:

RE: Incentive Payment

As Impopharma Inc. (“Impopharma”) enters this challenging period of its operations, ● would like to assure you that your contributions continue to be extremely valued.

Impopharma has commenced proceedings under the *Bankruptcy and Insolvency Act* (“BIA”). During those proceedings, Impopharma intends to conduct a process to identify one or more investors or to sell the business as a going concern.

In consideration of your ongoing loyalty to Impopharma during the BIA proceedings, Impopharma is offering you the following incentive in addition to your regular salary:

- a) a \$● cash payment, less applicable deductions and withholdings, payable upon the earliest of the following events: i) termination of your employment by Impopharma without cause; and ii) ●, 2018; and
- b) a cash payment equal to ●% of the net proceeds of any sale or restructuring transaction completed in the context of the BIA proceedings, less applicable deductions and withholdings, payable upon the implementation of such transactions. It is understood and agreed that such payment shall only become due and payable if the proceed of such transaction(s) are sufficient to pay in full any and all prior ranking claims (including priority claims and secured claims).

This proposal has been approved by the Board of Directors. In addition, Impopharma will be seeking court approval of this proposal and a court-ordered charge over the property of Impopharma as security for the obligations of Impopharma to make the payment set out herein. The charge will rank behind certain other court charges.

In order to be entitled to receive the incentive bonus described above:

1. You must not have disclosed these arrangements to any person other than your personal representatives and legal advisors (other than any disclosure required by law); and
2. Prior to the time that the payment becomes payable, you cannot have:
 - a. resigned;
 - b. been terminated with cause; or
 - c. failed to perform your duties and responsibilities diligently, faithfully and honestly in the opinion of your direct supervisor and the Board of Directors.

By executing this letter agreement, you acknowledge and agree that this letter agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties hereto, including your prior **[retention bonus agreement]** dated **[date]** (the "**Prior Retention Agreement**"), and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. Without limiting the generality of the foregoing, you specifically acknowledge that by accepting the terms of this letter agreement, the Prior Retention Agreement is cancelled, void and of no force and effect and that you forfeit all rights and entitlements thereunder.

We truly appreciate your continued hard work and importance to Impopharma as **[position]**, particularly at this time.

Sincerely,

[Name]

[Title]

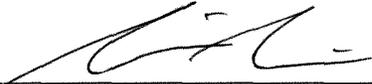


By signing below, I acknowledge that my execution of this letter agreement is done freely and voluntarily having had an opportunity to review and seek independent legal advice as to the terms and conditions set out above.

Agreed to and accepted this _____ day of _____, 2018.

[Employee's Name]

This is Exhibit "J" referred to in the Affidavit of Theron E. Odlaug made before me on this 26th day of July, 2018.



A Commissioner for Taking Affidavits in
and for the Province of Ontario

CONFIDENTIAL

Exhibit J

Filed under confidential seal.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 2ND
)
JUSTICE) DAY OF AUGUST, 2018
)

IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL UNDER
THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED OF

IMPOPHARMA INC.

ORDER

THIS MOTION made by Impopharma Inc. ("**Impopharma**"), pursuant to, *inter alia*, sections 64.1, 64.2 and 183 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Theron E. Odlaug sworn July 26, 2018 and the exhibits thereto (the "**Odlaug Affidavit**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for Impopharma, counsel for MidCap Financial Trust ("**MidCap**") and counsel for Richter Advisory Group Inc., in its capacity as trustee to the Notice of Intention to Make a Proposal ("**NOI**") of Impopharma (the "**Trustee**"), and no one else appearing although duly served as appears from the affidavit of service of Amanda Santache sworn July 26, 2018:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the stay of proceedings resulting from the filing by Impopharma of the NOI is extended until September 30, 2018.

FORBEARANCE AGREEMENT

3. **THIS COURT ORDERS** that the Forbearance Agreement entered into on July 25, 2018 between Impopharma and MidCap (Exhibit D to the Odlaug Affidavit) (the "Forbearance Agreement"), is hereby approved, the execution thereof is hereby approved and that Impopharma is hereby authorized and empowered to perform its obligations thereunder.

SISP

4. **THIS COURT ORDERS** that the sale, refinancing and investment solicitation process in respect of Impopharma's assets (the "SISP"), including its milestones as set out in paragraph 50 of the Odlaug Affidavit, be and is hereby approved and that Impopharma, with the assistance of the Trustee, is hereby authorized and empowered to take such steps as are necessary or desirable to carry out the SISP, provided that any definitive agreement to be executed by Impopharma in respect of the sale of all or part of the Property (as defined below) shall require further approval of this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

5. **THIS COURT ORDERS** that Impopharma shall indemnify its directors and officers (collectively, the "D&Os") against obligations and liabilities that they may incur as directors or officers of Impopharma after the filing of the NOI, except to the extent that, with respect to any of the D&Os, the obligation or liability was incurred as a result of the such D&O's gross negligence or wilful misconduct.

6. **THIS COURT ORDERS** that the D&Os of Impopharma shall be entitled to the benefit of and are hereby granted a charge (the "D&O Charge") on all of Impopharma's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), which charge shall not exceed an aggregate amount of \$75,000, as security for the indemnity provided in paragraph 5 of this Order. The D&O Charge shall have the priority set out in paragraphs 13 and 15 herein.

7. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the D&Os shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 5 of this Order.

ADMINISTRATION CHARGE

8. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to Impopharma shall be paid their reasonable fees and disbursements, in each case at their

standard rates and charges, by Impopharma as part of the costs of these proceedings. Impopharma is hereby authorized and directed to pay the accounts of the Trustee, counsel for the Trustee and counsel for Impopharma as such accounts are rendered and, in addition, Impopharma is hereby authorized to pay the Trustee, counsel to the Trustee and counsel to the Applicant reasonable retainers to be held by them as security for the payment of their respective fees and disbursements outstanding from time to time.

9. **THIS COURT ORDERS** that the Trustee and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Trustee and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

10. **THIS COURT ORDERS** that the Trustee, counsel to the Trustee and counsel to Impopharma shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed \$100,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the filing of the NOI in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 13 and 15 herein.

KERP CHARGE

11. **THIS COURT ORDERS** that the Retention Contracts (the "**Retention Contracts**") and related summary table (the "**KERP Table**") are hereby approved and that Impopharma is hereby authorized and empowered to perform its obligation thereunder and to make the payments in accordance with the terms set out therein.

12. **THIS COURT ORDERS** that the employees designated in the KERP Table shall be entitled to the benefit of and are hereby granted a charge (the "KERP Charge") on the Property, which charge shall not exceed \$550,000, as security for payment of the obligations set forth under the Retention Contracts and related KERP Table. The KERP Charge shall have the priority set out in paragraphs 13 and 15 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

13. **THIS COURT ORDERS** that the priorities of the D&O Charge, the Administration Charge, the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000);

Second – D&O Charge (to the maximum amount of \$75,000); and

Third – KERP Charge (to the maximum amount of \$550,000).

14. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, D&O Charge, and the KERP Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

15. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Charges shall rank ahead in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any person, subject only to the following:

- (a) The Charges, as described in paragraph 13 of this Order, shall rank junior to MidCap's existing security interest over the Property, only to the extent where such security interest attaches to Impopharma's rights and interest to or in any Scientific Research and Experimental Development tax incentive claim (the "SRED Claim");
- (b) Otherwise, the Charges, as described in paragraph 13 of this Order, shall rank prior to MidCap's existing security interest over the Property, but only up to the following amounts
 - Beneficiaries of the Administration Charge: \$100,000;
 - Beneficiaries of the D&O Charge: \$75,000; and
 - Beneficiaries of the KERP Charge: \$360,000 (*vis-à-vis* MidCap, the amount of the KERP Charge shall be reduced by any payment made to the beneficiary of such Charge in accordance with the Projected Statement of Cash Flow attached to the Forbearance Agreement as Schedule D);

16. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, Impopharma shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless Impopharma also obtains the prior written consent of the Trustee, the beneficiaries of the Charges, MidCap or further Order of this Court.

17. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency (expressly or impliedly) made herein; (b) any motion(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such motion(s); (c) any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds Impopharma, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Retention Contracts shall create or be deemed to constitute a breach by Impopharma of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges or Impopharma entering into the Retention Contracts or executing, delivering or performing of any obligation pursuant to any related documents;
and
- (c) the payments made by Impopharma pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

18. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in Impopharma's interest in such real property leases.

SEALING

19. **THIS COURT ORDERS** that Impopharma's financial statements (Exhibit H to the Odlaug Affidavit) and the KERP Table (Exhibit J to the Odlaug Affidavit) filed with the Court shall be kept confidential and under seal with the Court until further order of this Court.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

21. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other

correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to Impopharma's creditors or other interested parties at their respective addresses as last shown on the records of Impopharma and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

22. **THIS COURT ORDERS** that the Trustee shall not take possession of the Property and shall take no part whatsoever in management or supervision of the management of the business of Impopharma and shall not, in carrying out the SISP or otherwise fulfilling its obligations hereunder or under the BIA, be deemed to have taken possession or control of the Business or Property, or any part thereof.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Trustee under the BIA or as an officer of this Court, the Trustee shall incur no liability or obligation as a result of its appointment or the carrying out of the SISP or the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Trustee by the BIA or any applicable legislation.

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist Impopharma, the Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative

bodies are hereby respectfully requested to make such orders and to provide such assistance to Impopharma and to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Trustee in any foreign proceeding, or to assist Impopharma and the Trustee and their respective agents in carrying out the terms of this Order.

25. **THIS COURT ORDERS** that each of Impopharma and the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, whereby located, for the recognition of this Order and for assistance in carrying out the terms of this Order, including the enforcement of any Charge established hereby.

26. **THIS COURT ORDERS** that any interested party (including Impopharma and the Trustee) may apply to this court to vary or amend this Order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any as this court may order.

27. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

ORDER

STIKEMAN ELLIOTT LLP
Barristers & Solicitors
5300 Commerce Court West
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Toronto, Canada M5L 1B9

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Lawyers for the Applicant