

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

---

**FORM 8-K**

---

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

**Date of Report (Date of earliest event reported): March 5, 2018**

---

**VERU INC.**

(Exact name of registrant as specified in its charter)

---

**Wisconsin**  
(State or other jurisdiction  
of incorporation)

**1-13602**  
(Commission  
File Number)

**39-1144397**  
(IRS Employer  
Identification No.)

**4400 Biscayne Boulevard, Suite 888, Miami, Florida 33137**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number, including area code: (305) 509-6897**

**Not Applicable**  
(Former name or former address, if changed since last report.)

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

Emerging growth company

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

---

---

## Section 1 – Registrant’s Business and Operations

### Item 1.01 Entry into a Material Definitive Agreement

On March 5, 2018, Veru Inc. (the “Company”) entered into a Credit Agreement (the “Credit Agreement”) with the financial institutions party thereto from time to time (the “Lenders”) and SWK Funding LLC, as agent for the Lenders (the “Agent”), for a synthetic royalty financing transaction. On and subject to the terms of the Credit Agreement, the Lenders agreed to provide the Company with a multi-draw term loan of up to \$12.0 million, with \$10 million advanced to the Company on the date of the Credit Agreement. The Company may draw up to an additional \$1.0 million if the Company enters into an agreement to distribute at least 47.5 million units of its FC2 Female Condom (“FC2”) in Brazil upon the terms described in the Credit Agreement and up to an additional \$1.0 million if the Company enters into an agreement to distribute at least 30 million units of FC2 in South Africa upon the terms described in the Credit Agreement.

The Lenders will be entitled to receive quarterly payments on the term loan based on the Company’s product revenue from net sales of FC2 as provided in the Credit Agreement until the Company has paid 175% of the aggregate amount advanced to the Company under the Credit Agreement. Upon the Credit Agreement’s termination date of March 5, 2025, the Company must pay 175% of the aggregate amount advanced to the Company under the Credit Agreement less the amounts previously paid by the Company from product revenue, less the outstanding principal amount of the loans as of such date. Upon a change of control of the Company or sale of the FC2 business, the Company must pay off the loan by making a payment to the Lenders equal to (a) if the change of control or sale of the FC2 business occurs prior to September 5, 2018, an amount equal to 165% of the aggregate amount actually advanced to the Company under the Credit Agreement or (b) if the change of control or sale of the FC2 business occurs on or after September 5, 2018, an amount equal to (i) 175% of the aggregate amount advanced to the Company under the Credit Agreement less the amounts previously paid by the Company from product revenue, less the outstanding principal amount of the loans as of such date, plus (ii) the greater of (A) \$2 million or (B) the product of (x) 5% of the product revenue from net sales of FC2 for the most recently completed 12 month period multiplied by (y) five. A “change of control” under the Credit Agreement includes (i) an acquisition by any person of direct or indirect ownership of more than 50% of the Company’s issued and outstanding voting equity, (ii) a change of control or similar event in the Company’s articles of incorporation or bylaws, (iii) certain Key Persons as defined in the Credit Agreement cease to serve in their current executive capacities unless replaced within 90 days by a person reasonably acceptable to the Agent, which acceptance not to be unreasonably withheld, or (iv) the sale of all or substantially all of the Company’s assets.

The Credit Agreement contains customary representations and warranties in favor of the Agent and the Lenders and certain covenants, including financial covenants addressing minimum quarterly marketing and distribution expenses for FC2 and a requirement to maintain minimum unencumbered liquid assets of \$1 million. The recourse of the Lenders and the Agent for obligations under the Credit Agreement is limited to assets relating to FC2.

In connection with the Credit Agreement, Veru and the Agent also entered into a Residual Royalty Agreement, dated as of March 5, 2018 (the “Residual Royalty Agreement”), which provides for an ongoing royalty payment of 5% of product revenue from net sales of FC2 commencing upon the payment in full by the Company of the return premium pursuant to the Credit Agreement of 175% of the aggregate amount actually advanced to the Company under the Credit Agreement, less the amounts previously paid by the Company from product revenue, less the outstanding principal amount of the loans as of such date. The Residual Royalty Agreement will terminate upon (i) a change of control or sale of the FC2 business and the payment by the Company of the amount due in connection therewith pursuant to the Credit Agreement, or (ii) mutual agreement of the parties.

Pursuant to a Guarantee and Collateral Agreement dated as of March 5, 2018 (the “Collateral Agreement”) and an Intellectual Property Security Agreement dated as of March 5, 2018 (the “IP Security Agreement”), the Company’s obligations under the Credit Agreement are secured by a lien against substantially all of the assets of the Company that relate to or arise from FC2. In addition, pursuant to a Pledge Agreement dated as of March 5, 2018 (the “Pledge Agreement”), the Company’s obligations under the Credit Agreement are secured by a pledge of up to 65% of the outstanding shares of The Female Health Company Limited, a wholly owned UK subsidiary.

After payment by the Company of certain fees and expenses of the Agent and the Lenders as required in the Credit Agreement, the Company received net proceeds of approximately \$9.9 million from the initial \$10 million advance under the Credit Agreement.

The foregoing description of the Credit Agreement, the Residual Royalty Agreement, the Collateral Agreement, the IP Security Agreement and the Pledge Agreement does not purport to be complete and is qualified in its entirety by the full text of such agreements, copies of which are attached as exhibits hereto and are incorporated herein by reference.

---

**Section 2 – Financial Information**

**Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The information contained in Item 1.01 of this report is incorporated herein by reference.

**Section 9 – Financial Statements and Exhibits**

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits.

The following exhibits are filed herewith:

- Exhibit 10.1 [Credit Agreement, dated as of March 5, 2018, among the Company, the Agent and the Lenders party thereto from time to time.](#)
- Exhibit 10.2 [Residual Royalty Agreement, dated as of March 5, 2018, between the Company and the Agent.](#)
- Exhibit 10.3 [Guarantee and Collateral Agreement, dated as of March 5, 2018, between the Company and the Agent.](#)
- Exhibit 10.4 [Intellectual Property Security Agreement, dated as of March 5, 2018, between the Company and the Agent.](#)
- Exhibit 10.5 [Pledge Agreement, dated as of March 5, 2018, between the Company and the Agent.](#)

---

**SIGNATURES**

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

Date: March 6, 2018

VERU INC.

By: /s/ Michele Greco  
Michele Greco  
Executive Vice President of Finance and  
Chief Administrative Officer

**CREDIT AGREEMENT**

among

VERU INC.,  
as Borrower,

SWK FUNDING LLC,  
as Agent, Sole Lead Arranger and Sole Bookrunner,

and

the financial institutions party hereto from time to time as Lenders

Dated as of March 5, 2018

---

## Table of Contents

	Page	
Section 1	Definitions; Interpretation	1
1.1	Definitions	1
1.2	Interpretation	15
Section 2	Credit Facility	15
2.1	Term Loan Commitments	15
2.2	Loan Procedures	16
2.2.1	Initial Advance	16
2.2.2	Subsequent Term Loan	16
2.2.3	Subsequent Term Loan	16
2.3	Commitments Several	16
2.4	Indebtedness Absolute; No Offset; Waiver	16
2.5	Loan Accounting	17
2.5.1	Recordkeeping	17
2.5.2	Notes	17
2.6	[Reserved	18
2.7	Return Premium	18
2.8	Prepayment	18
2.8.1	Mandatory Prepayment	18
2.8.2	Change of Control/Sale of FC2 Product	18
2.9	Repayment of Term Loan	18
2.9.1	Revenue-Based Payment	18
2.9.2	Principal	20
2.10	Payment	20
2.10.1	Making of Payments	20
2.10.2	Application of Payments and Proceeds	21
2.10.3	Set-off	21
2.10.4	Proration of Payments	21
Section 3	Yield Protection	21
3.1	Taxes	21
3.2	Increased Cost	23
3.3	[Reserved	25
3.4	Manner of Funding; Alternate Funding Offices	25
3.5	Conclusiveness of Statements; Survival	25
Section 4	Conditions Precedent	25
4.1	Prior Debt	25
4.2	Delivery of Loan Documents	25
4.3	Fees	27
4.4	Residual Royalty Agreement	27
4.5	Representations, Warranties, Defaults	27
4.6	Diligence	27
4.7	Corporate Matters	27
4.8	No Felonies or Indictable Offenses	27
4.9	No Material Adverse Effect	28

Section 5	Representations and Warranties	28
5.1	Organization	28
5.2	Authorization; No Conflict	28
5.3	Validity; Binding Nature	28
5.4	Financial Condition	28
5.5	No Material Adverse Change	29
5.6	Litigation	29
5.7	Ownership of Properties; Liens	29
5.8	Capitalization	29
5.9	Pension Plans	29
5.10	Investment Company Act	30
5.11	No Default	30
5.12	Margin Stock	30
5.13	Taxes	30
5.14	Solvency	30
5.15	Environmental Matters	30
5.16	Insurance	31
5.17	Information	31
5.18	FC2 Intellectual Property; FC2 Product and Services	31
5.19	Restrictive Provisions	32
5.20	Labor Matters	32
5.21	Material Contracts	32
5.22	Compliance with Laws; Health Care Laws	33
5.23	Existing Indebtedness; Investments, Guarantees and Certain Contracts	34
5.24	Affiliated Agreements	34
5.25	Names; Locations of Offices, Records and Collateral; Deposit Accounts	34
5.26	Non-Subordination	34
5.27	Broker's or Finder's Commissions	34
5.28	Anti-Terrorism; OFAC	35
5.29	Security Interest	35
5.30	Survival	35
Section 6	Affirmative Covenants	35
6.1	Information	36
6.1.1	Annual Report	36
6.1.2	Interim Reports	36
6.1.3	Revenue-Based Payment Reconciliation	36
6.1.4	Compliance Certificate	37
6.1.5	Reports to Governmental Authorities and Shareholders	37
6.1.6	Notice of Default; Litigation	37
6.1.7	Management Report	38
6.1.8	Projections	38
6.1.9	Updated Schedules to Guarantee and Collateral Agreement	38
6.1.10	Other Information	39
6.2	Books; Records; Inspections	39
6.3	Conduct of Business; Maintenance of Property; Insurance	39
6.4	Compliance with Laws; Payment of Taxes and Liabilities	40
6.5	Maintenance of Existence	41
6.6	Employee Benefit Plans	41
6.7	Environmental Matters	41
6.8	Further Assurances	41

6.9	Compliance with Health Care Laws	42
6.10	Cure of Violations	43
6.11	Corporate Compliance Program	43
6.12	Payment of Debt	43
Section 7	Negative Covenants	43
7.1	Debt	43
7.2	Liens	44
7.3	Dividends; Redemption of Equity Interests	46
7.4	Mergers; Consolidations; Asset Sales	46
7.5	Modification of Organizational Documents	46
7.6	Use of Proceeds	47
7.7	Transactions with Affiliates	47
7.8	Inconsistent Agreements	47
7.9	Business Activities	47
7.10	Investments	47
7.11	Restriction of Amendments to Certain Documents	48
7.12	Fiscal Year	48
7.13	Financial Covenants	48
7.13.1	Minimum Marketing Expenses	48
7.13.2	Consolidated Unencumbered Liquid Assets	48
7.13.3	Upstream Payments	49
7.13.4	Malaysian Profit Margin	49
7.14	Deposit Accounts	49
7.15	Subsidiaries	49
7.16	Regulatory Matters	49
7.17	Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names	50
7.18	Secured Debt at Subsidiaries	50
Section 8	Events of Default; Remedies	50
8.1	Events of Default	50
8.1.1	Non-Payment of Credit	50
8.1.2	Default Under Other Debt	50
8.1.3	Bankruptcy; Insolvency	51
8.1.4	Non-Compliance with Loan Documents	51
8.1.5	Representations; Warranties	51
8.1.6	Pension Plans	51
8.1.7	Judgments	52
8.1.8	Invalidity of Loan Documents or Liens	52
8.1.9	[Reserved	52
8.1.10	Change of Control	52
8.1.11	Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters	52
8.1.12	Material Adverse Effect	52
8.2	Remedies	53
Section 9	Agent	54
9.1	Appointment; Authorization	54
9.2	Delegation of Duties	54
9.3	Limited Liability	54



9.4	Reliance	54
9.5	Notice of Default	55
9.6	Credit Decision	55
9.7	Indemnification	55
9.8	Agent Individually	56
9.9	Successor Agent	56
9.10	Collateral and Guarantee Matters	56
9.11	Intercreditor Agreements	57
9.12	Actions in Concert	57
Section 10	Miscellaneous	58
10.1	Waiver; Amendments	58
10.2	Notices	58
10.3	Computations	59
10.4	Costs; Expenses	59
10.5	Indemnification by Borrower	59
10.6	Marshaling; Payments Set Aside	60
10.7	Nonliability of Lenders	60
10.8	Assignments	61
	10.8.1 Assignments	61
10.9	Participations	62
10.10	Confidentiality	63
10.11	Captions	63
10.12	Nature of Remedies	64
10.13	Counterparts	64
10.14	Severability	64
10.15	Entire Agreement	64
10.16	Successors; Assigns	64
10.17	Governing Law	64
10.18	Forum Selection; Consent to Jurisdiction	65
10.19	Waiver of Jury Trial	65
10.20	Patriot Act	65
10.21	Independent Nature of Relationship	65
10.22	Limited Recourse	66

---

Annexes

Annex I                      Commitments and Pro Rata Term Loan Shares  
Annex II                     Addresses

Exhibits

Exhibit A                    Form of Assignment Agreement  
Exhibit B                    Form of Compliance Certificate  
Exhibit C                    Form of Note

Schedules

Schedule 1.1                Pending Acquisitions as of the Closing Date  
Schedule 4.1                Prior Debt  
Schedule 5.1                Jurisdictions of Qualification  
Schedule 5.7                Ownership of Properties; Liens  
Schedule 5.8                Capitalization  
Schedule 5.16               Insurance  
Schedule 5.18 (a)           Borrower's Registered Intellectual Property  
Schedule 5.18 (b)           FC2 Product and Required Permits  
Schedule 5.21               Material Contracts  
Schedule 5.25A               Names  
Schedule 5.25B               Offices  
Schedule 5.27               Broker's Commissions  
Schedule 7.7                Transactions with Affiliates  
Schedule 7.11               Restricted Material Contracts  
Schedule 7.14               Deposit Accounts

## CREDIT AGREEMENT

This CREDIT AGREEMENT (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement") dated as of March 5, 2018 (the "Closing Date"), among VERU INC., a Wisconsin corporation ("Borrower"), the financial institutions party hereto from time to time as lenders (each a "Lender" and collectively, the "Lenders") and SWK FUNDING LLC (in its individual capacity, "SWK"), as Agent for all Lenders.

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

### Section 1 Definitions: Interpretation.

#### 1.1 Definitions.

When used herein the following terms shall have the following meanings:

Account Control Agreement means, individually and collectively, any account control or similar agreement(s) entered into from time to time at Agent's request, among a Loan Party, Agent and any third party bank or financial institution at which such Loan Party maintains a Deposit Account (other than an Exempt Account).

Acquisition means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of all or substantially all of any business or division of a Person, (b) the acquisition of in excess of fifty percent (50%) of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a Subsidiary, (c) the acquisition of a product license or a product line (excluding, for purposes of Section 7.10 hereof, any pending Acquisitions as of the Closing Date as set forth on Schedule 1.1 hereto), or (d) a merger or consolidation or any other combination (other than a merger, consolidation or combination that effects a Disposition) with another Person (other than a Person that is already a Subsidiary).

Affiliate of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, officer or director of such Person and (c) with respect to any Lender, any entity administered or managed by such Lender or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term "Affiliate", a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Unless expressly stated otherwise herein, neither Agent nor any Lender shall be deemed an Affiliate of Borrower or of any Loan Party.

Agent means SWK in its capacity as administrative agent for all Lenders hereunder and any successor thereto in such capacity.

Agreement has the meaning set forth in the Preamble.

Approved Fund means (a) any fund, trust or similar entity that invests in commercial loans in the ordinary course of business and is advised or managed by (i) a Lender, (ii) an Affiliate of a Lender, (iii) the same investment advisor that manages a Lender or (iv) an Affiliate of an investment advisor that manages a Lender or (b) any finance company, insurance company or other financial institution which temporarily warehouses loans for any Lender or any Person described in clause (a) above.

Assignment Agreement means an agreement substantially in the form of Exhibit A.

Authorization shall have the meaning set forth in Section 5.22(b).

Borrower shall have the meaning set forth in the Preamble.

Business Day means any day on which commercial banks are open for commercial banking business in Dallas, Texas.

Capital Lease means, with respect to any Person, any lease of (or other agreement conveying the right to use) any real or personal property by such Person that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of such Person.

Cash Equivalent Investment means, at any time, (a) any evidence of Debt, maturing not more than one year after such time, issued or guaranteed by the United States Government or any agency thereof, (b) commercial paper, or corporate demand notes, in each case (unless issued by a Lender or its holding company) rated at least "A-1" by Standard & Poor's Ratings Group or "P-1" by Moody's Investors Service, Inc., (c) any certificate of deposit (or time deposit represented by a certificate of deposit) or banker's acceptance maturing not more than one year after such time, or any overnight Federal Funds transaction that is issued or sold by any Lender (or by a commercial banking institution that is a member of the Federal Reserve System or is a U.S. branch of a foreign banking institution and has a combined capital and surplus and undivided profits of not less than \$500,000,000), (d) any repurchase agreement entered into with any Lender (or commercial banking institution of the nature referred to in clause (c) above) which (i) is secured by a fully perfected security interest in any obligation of the type described in any of clauses (a) through (c) above and (ii) has a market value at the time such repurchase agreement is entered into of not less than one-hundred percent (100%) of the repurchase obligation of such Lender (or other commercial banking institution) thereunder, (e) money market accounts or mutual funds which invest exclusively or substantially in assets satisfying the foregoing requirements, (f) cash, and (g) other short term liquid investments approved in writing by Agent.

Change of Control means the occurrence of any of the following, unless such action has been consented to in advance in writing by Agent in its sole discretion:

- (i) any Person acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting Equity Interests of Borrower;
- (ii) Borrower shall at any time fail to own, directly or indirectly, 100% of the Equity Interests of each of its Subsidiaries (excluding Subsidiaries that do not own any FC2 Product, FC2 Intellectual Property or engage in the FC2 Business);
- (iii) a Key Person Event;
- (iv) any "change in/of control" or "sale" or "disposition" or "merger" or similar event as defined in any certificate of incorporation or formation or statement of designations or bylaws or operating agreement, as applicable, of Borrower or in any document governing indebtedness of any Loan Party (other than any Loan Documents) in excess of \$250,000, individually or in the aggregate which gives the holder of such indebtedness the right to accelerate or otherwise require payment of such indebtedness prior to the maturity date thereof; or

(v) the sale of all or substantially all the assets of Borrower, the sale of any material portion of the assets relating to the FC2 Product, or any merger, consolidation or acquisition by Borrower which does not result in Borrower being the sole surviving entity.

CLIA means (a) the Clinical Laboratory Improvement Act of 1967, as the same may be amended, modified or supplemented from time to time, including without limitation the Clinical Laboratory Improvement Amendments, 42 U.S.C. § 263a et seq. (“CLIA 88”), and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder, or (b) any equivalent state statute (and any and all rules or regulations promulgated from time to time thereunder) recognized by the relevant Governmental Authority as (x) having an “Equivalency” (as defined by CLIA) to CLIA, and (y) offering a compliance and regulatory framework that is applicable to a Person in such state in lieu of CLIA.

Closing Date shall have the meaning set forth in the Preamble.

CMS means the Centers for Medicare and Medicaid Services of the United States of America.

Collateral has the meaning set forth in the Guarantee and Collateral Agreement.

Collateral Access Agreement means an agreement in form and substance reasonably satisfactory to Agent pursuant to which a mortgagee or lessor of real property on which any material portion of the Collateral (or any books and records) is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory owned by Borrower, acknowledges the Liens of Agent and waives (or, if approved by Agent, subordinates) any Liens held by such Person on such property, and, in the case of any such agreement with a mortgagee or lessor, permits Agent reasonable access to any Collateral stored or otherwise located thereon.

Collateral Documents means, collectively, the Guarantee and Collateral Agreement, the IP Security Agreement, the Pledge Agreement, each Collateral Access Agreement, any mortgage delivered in connection with the Loan from time to time, each Account Control Agreement and each other agreement or instrument pursuant to or in connection with which any Loan Party or any other Person grants a Lien in any Collateral to Agent for the benefit of Lenders, each as amended, restated or otherwise modified from time to time.

Commitment means, as to any Lender, such Lender’s Pro Rata Term Loan Share.

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

Consolidated Net Income means, with respect to any Person and its Subsidiaries, for any period, the consolidated net income (or loss) of such Person and its respective Subsidiaries for such period, as determined under GAAP.

Consolidated Unencumbered Liquid Assets means as of any date of determination (i) cash or any Cash Equivalent Investment owned by Borrower and on deposit in a Deposit Account subject to an Account Control Agreement in favor of Agent and which is not the subject of any Lien or other arrangement with any creditor to have its claim satisfied out of the asset (or proceeds thereof) prior to the general creditors of Borrower other than the Lien for the benefit of Agent and Lenders, minus (ii) the aggregate amount of Borrower’s accounts payable which are unpaid more than sixty (60) days beyond trade terms consistent with Borrower’s past practice.

---

Contingent Obligation means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to or otherwise to invest in a debtor, or otherwise to assure a creditor against loss) any indebtedness, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation in respect of any Contingent Obligation shall be deemed to be the amount for which the Person obligated thereon is reasonably expected to be liable or responsible.

Controlled Group means all members of a controlled group of corporations and all members of a controlled group of trades or businesses (whether or not incorporated) under common control which, together with Borrower, are treated as a single employer under Section 414 of the IRC or Section 4001 of ERISA.

Controlled Substances Act means the Drug Abuse Prevention and Control Act; Title 21 of the United States Code, 13 U.S.C, as amended from time to time.

Copyrights shall mean all of Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to the following, in each case, solely related to the FC2 Product: (a) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (b) all renewals of any of the foregoing.

DEA means the Federal Drug Enforcement Administration of the United States of America.

Debt of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person as lessee under Capital Leases which have been or should be recorded as liabilities on a balance sheet of such Person in accordance with GAAP, (d) all obligations of such Person to pay the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business), other than royalty payments or milestone payments made or to be made by such Person from time to time in connection with an Acquisition, (e) all indebtedness secured by a Lien on the property of such Person, whether or not such indebtedness shall have been assumed by such Person (with the amount thereof being measured as the lesser of (x) the aggregate unpaid amount of such indebtedness and (y) the fair market value of such property), (f) all reimbursement obligations, contingent or otherwise, with respect to letters of credit (whether or not drawn), banker's acceptances and surety bonds issued for the account of such Person, other than obligations that relate to trade accounts payable in the ordinary course of business, (g) all Hedging Obligations of such Person, (h) all Contingent Obligations of such Person in respect of Debt of others, (i) all indebtedness of any partnership of which such Person is a general partner except to the extent such Person is not liable for such Debt, and (j) all obligations of such Person under any synthetic lease transaction, where such obligations are considered borrowed money indebtedness for tax purposes but the transaction is classified as an operating lease in accordance with GAAP.

Debtor Relief Law means, collectively: (a) Title 11 of the United States Code, 11 U.S.C. § 101 et. seq., as amended from time to time, and (b) all other United States or foreign applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws from time to time in effect affecting the rights of creditors generally, in each case as amended from time to time.

Default means any event that, if it continues uncured, will, with the lapse of time or the giving of notice or both, constitute an Event of Default.

Default Premium has the meaning set forth in Section 2.9.1(b)(ii) hereof.

Deposit Account means, individually and collectively, any bank or other depository accounts of Borrower.

Device Application means a premarket approval application for a class III medical device, or a product license application for any Product, as those terms are defined in the FDA law and Regulation.

Disposition means, as to any asset or right of Borrower solely used in connection with the FC2 Product, (a) any sale, lease, assignment or other transfer, but specifically excluding any license or sublicense, (b) any loss, destruction or damage thereof or (c) any condemnation, confiscation, requisition, seizure or taking thereof, in each case excluding (i) the sale of Inventory or FC2 Product in the ordinary course of business, (ii) any issuance of Equity Interests by Borrower, and (iii) any other Disposition where the Net Cash Proceeds of any sale, lease, assignment, transfer, condemnation, confiscation, requisition, seizure or taking do not in the aggregate exceed \$250,000 in any Fiscal Year.

Dollar and \$ mean lawful money of the United States of America.

EBITDA means, for any Person and its Subsidiaries for any period, Consolidated Net Income for such period plus, to the extent deducted in determining such Consolidated Net Income for such period (and without duplication), (a) Interest Expense, (b) income tax expense (including tax accruals), (c) depreciation and amortization, (d) nonrecurring cash fees, costs and expenses incurred in connection with the Acquisitions of product licenses and product lines from a third party, and milestone and royalty payments to any third party, in relation to any Material Contract or any other Acquisition made prior to the date of this Agreement, (e) non-cash expenses relating to equity-based compensation or purchase accounting, (f) fees, costs and expenses associated with this Agreement, the other Loan Documents and the transactions contemplated hereby, and (g) other non-recurring and/or non-cash expenses or charges approved by the Agent.

Elapsed Period has the meaning set forth in Section 2.9.1(a).

Environmental Claims means all claims, however asserted, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the environment or any Person or property.

Environmental Laws means all present or future foreign, federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case relating to any matter arising out of or relating to the effect of the environment on health and safety, or pollution or protection of the environment or workplace, including any of the foregoing relating to the presence, use, production, generation, handling, transport, treatment, storage, disposal, distribution, discharge, release, control or cleanup of any Hazardous Substance.

Equity Interests means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.

Event of Default means any of the events described in Section 8.1.

Excluded Taxes has the meaning set forth in Section 3.1(a).

Exempt Accounts means any Deposit Accounts, securities accounts or other similar accounts (a) into which there are deposited no funds other than those intended solely to cover compensation to employees of Borrower (and related contributions to be made on behalf of such employees to health and benefit plans) plus balances for outstanding checks for compensation and such contributions from prior periods; (b) constituting employee withholding accounts and contain only funds deducted from pay otherwise due to employees for services rendered to be applied toward the tax obligations of such Person or its employees; or (c) identified by Borrower to Agent as relating exclusively to businesses, products and activities of the Loan Parties other than the FC2 Product and into which there are deposited no proceeds of Net Sales.

Fair Valuation shall mean the determination of the value of the consolidated assets of a Person on the basis of the amount which may be realized by a willing seller within a reasonable time through collection or sale of such assets at market value on a going concern basis to an interested buyer who is willing to purchase under ordinary selling conditions in an arm's length transaction.

FATCA means Sections 1471 through 1474 of the IRC and any current or future regulations thereunder or official interpretations thereof.

FC2 Business means the business of the Borrower and its Subsidiaries relative to the FC2 Product and any related Services, including the development, manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution and delivery of the FC2 Product and related Services.

FC2 Intellectual Property means all Intellectual Property owned or leased by Borrower and which is solely used in connection with the FC2 Product.

FC2 Product means that certain female condom product approved for market by FDA as a Class III medical device in 2009 and prequalified by the United Nations Fund for Population Activities (UNFPA) that provides dual protection against unintended pregnancy and sexually transmitted infections (STIs), including HIV/AIDS and the Zika virus, and its equivalent approved products elsewhere in the world, including any improvement thereof and any replacement or any other product to be used for the same or similar purposes.

FD&C Act means the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 et seq., as amended.

FDA means the Food and Drug Administration of the United States of America.



---

FDA Law and Regulation means the provisions of the FD&C Act and all applicable regulations promulgated by the FDA.

FDA Products means any finished products sold by Borrower or any of the other Loan Parties for itself or for a third party that are subject to applicable Health Care Laws.

Fiscal Quarter means a calendar quarter of a Fiscal Year.

Fiscal Year means the fiscal year of Borrower, which period shall be the twelve (12) month period ending on September 30 of each year.

Foreign Lender means any Lender that is not a "United States person" within the meaning of Section 7701(a)(30) of the IRC.

FRB means the Board of Governors of the Federal Reserve System or any successor thereto.

GAAP means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any agency, branch of government, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign. Governmental Authority shall include any agency, branch or other governmental body charged with the responsibility and/or vested with the authority to administer and/or enforce any Health Care Laws.

Guarantee and Collateral Agreement means the Guarantee and Collateral Agreement dated as of the Closing Date executed by each Loan Party signatory thereto in favor of Agent and Lenders.

Hazardous Substances means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

Health Care Laws mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b)), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009 (collectively, "HIPAA"), and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii)

CLIA, as amended, and all applicable requirements, regulations, and guidance issued thereunder by the applicable Governmental Authority; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws or regulatory bodies; (ix) all applicable licensure laws and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

Hedging Obligation means, with respect to any Person, any liability of such Person under any interest rate, currency or commodity swap agreement, cap agreement or collar agreement, and any other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity prices. The amount of any Person's obligation in respect of any Hedging Obligation shall be deemed to be the incremental obligation that would be reflected in the financial statements of such Person in accordance with GAAP.

Indemnified Taxes has the meaning set forth in Section 3.1(a).

Intellectual Property shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any intellectual property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing, in each case, solely used in connection with the FC2 Product.

Interest Expense means for any Person and its Subsidiaries for any period the consolidated interest expense of such Person and its Subsidiaries for such period (including all imputed interest on Capital Leases).

Inventory has the meaning set forth in the Guarantee and Collateral Agreement.

Investment means, with respect to any Person, (a) the purchase of any debt or equity security of any other Person, (b) the making of any loan or advance to any other Person, (c) becoming obligated with respect to a Contingent Obligation in respect of obligations of any other Person (other than travel and similar advances to employees in the ordinary course of business) or (d) the making of an Acquisition (excluding subclause (c) of the definition thereof).

IP Security Agreement means the Intellectual Property Security Agreement dated on or about the Closing Date by each Loan Party signatory thereto in favor of Agent and Lenders.

IRC means the Internal Revenue Code of 1986, as amended.

IRS means the United States Internal Revenue Service.

Key Person means, individually, each of (i) Mitchell Steiner, (ii) Denise Van Dijk, and (iii) Michele Greco.

Key Person Event means, unless such actions are consented to in advance in writing by Agent, any Key Person shall no longer serve in its respective, current executive capacity with Borrower, unless such Key Person is replaced within ninety (90) days with (in each case) a person reasonably acceptable to Agent, which acceptance shall not be unreasonably withheld.

Legal Costs means, with respect to any Person, all reasonable, duly documented, out-of-pocket fees and charges of any counsel, accountants, auditors, appraisers, consultants and other professionals to such Person, and all court costs and similar legal expenses.

Lenders has the meaning set forth in the Preamble.

Lien means, with respect to any Person, any interest granted by such Person in any real or personal property, asset or other right owned or being purchased or acquired by such Person which secures payment or performance of any obligation and shall include any mortgage, lien, encumbrance, charge or other security interest of any kind, whether arising by contract, as a matter of law, by judicial process or otherwise.

Loan or Loans means, individually and collectively the Term Loan and any other advances made by Agent and Lenders in accordance with the Loan Documents.

Loan Documents means this Agreement, any Notes, the Residual Royalty Agreement, the Collateral Documents, the Post-Closing Agreement and all documents, instruments and agreements delivered in connection with the foregoing.

Loan Party means Borrower and each Affiliate of Borrower party to this Agreement or the Guarantee and Collateral Agreement from time to time.

Margin Stock means any "margin stock" as defined in Regulation T, U or X of the FRB.

Material Adverse Effect means (a) a material adverse change in, or a material and adverse effect upon, the condition (financial or otherwise), operations, assets, business or properties of Borrower and/or its Subsidiaries involved in the manufacturing or distribution of the FC2 Product taken as a whole, (b) a material impairment of the ability of any Loan Party to perform any of its payment Obligations under any Loan Document or (c) a material and adverse effect upon any material portion of the Collateral under the Collateral Documents or upon the legality, validity, binding effect or enforceability against any Loan Party of any material Loan Document.

Material Contract has the meaning assigned in Section 5.21 hereof.

Multiemployer Pension Plan means a multiemployer plan, as defined in Section 401(a)(3) of ERISA, to which Borrower or any member of the Controlled Group may have any liability.

Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance (other than business interruption insurance) and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by Borrower pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (provided that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by Borrower), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by Borrower to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by Borrower in connection therewith established in accordance with GAAP (provided that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi)(A) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all money actually applied within one-hundred eighty (180) days to repair or replace such assets to be used in the business of Borrower, and (B) with respect to any Disposition, all money actually applied within one-hundred eighty (180) days to replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, confiscation, requisition, seizure or taking.

Net Sales means the gross amount billed or invoiced by Borrower for Services and for the sale of the FC2 Product and (including products and services ancillary thereto) to independent customers, less deductions for (a) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken, (b) amounts deducted, repaid or credited by reason of rejections or returns of goods and government mandated rebates, or because of chargebacks or retroactive price reductions, (c) taxes, tariffs, duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of pharmaceutical products, and (d) shipping/freight charges for the customer invoiced by Borrower as an accommodation for which Borrower is later charged and is required to pay. The FC2 Product or a Service shall be considered sold and/or provided when billed out or invoiced. To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP. For the purposes of calculating Net Sales, Lenders and Agent understand and agree that (i) Affiliates of a Borrower shall not be regarded as independent customers and (ii) Net Sales shall not include the FC2 Product distributed for product development purposes, including for use in pre-clinical trials.

Note means a promissory note substantially in the form of Exhibit C.

Obligations means all liabilities, indebtedness and obligations (monetary or otherwise) of any Loan Party under this Agreement, any other Loan Document or any other document or instrument executed in connection herewith or therewith which are owed to any Lender or Affiliate of a Lender, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due. For the avoidance of doubt, "Obligations" shall include Borrower's obligation to pay the Return Premium and any Prepayment Fee otherwise due and payable on such date of determination

---

OFAC shall mean the U.S. Department of Treasury's Office of Foreign Asset Control.

Paid in Full, Pay in Full or Payment in Full means, with respect to any Obligations, the payment in full in cash of all such Obligations (other than (a) contingent indemnification obligations, yield protection and expense reimbursement to the extent no claim giving rise thereto has been asserted in respect of contingent indemnification obligations, and to the extent no amounts therefor have been asserted, in the case of yield protection and expense reimbursement obligations and (b) any amounts owing to SWK pursuant to the Residual Royalty Agreement, which Obligations shall survive the Payment in Full of the Obligations (other than a repayment made pursuant to Section 2.8.2) in accordance with the terms of the Residual Royalty Agreement).

Patents shall mean all of Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to, the following, in each case, solely related to the FC2 Product: (a) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (b) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Payment Date means the fifteenth (15<sup>th</sup>) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15<sup>th</sup> day is not a Business Day), commencing with May 15, 2018.

PBGC means the Pension Benefit Guaranty Corporation and any entity succeeding to any or all of its material functions under ERISA.

Pension Plan means a "pension plan", as such term is defined in Section 3(2) of ERISA, which is subject to Title IV of ERISA (other than a Multiemployer Pension Plan), and to which Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

Permit means, with respect to any Person any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including without limitation all registrations with Governmental Authorities, in each case, limited only to any of the same relating to the FC2 Product and/or FC2 Business.

Permitted Liens means Liens permitted by Section 7.2.

Person means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

Pledge Agreement means that certain Pledge Agreement, dated on or about the Closing Date, and executed by Borrower, as the same may be modified, amended and restated from time to time.

Post-Closing Agreement means that certain Post-Closing Agreement, dated as of the Closing Date, by and between Agent and Borrower, as the same may be modified, amended or restated from time to time.

Prepayment Fee has the meaning set forth in Section 2.8.2.

Prior Debt means the Debt listed on Schedule 4.1.

Product Revenue shall have the meaning set forth in Section 2.9.1(a).

Pro Rata Term Loan Share means, with respect to any Lender, the applicable percentage (as adjusted from time to time in accordance with the terms hereof) specified opposite such Lender's name on Annex I which percentage represents the aggregate percentage of the Term Loan Commitment held by such Lender, which percentage shall be with respect to the outstanding balance of the Term Loan as of any date of determination after the Term Loan Commitment has terminated.

Registered Intellectual Property means all applications, registrations and recordings for or of Patents, Trademarks or Copyrights filed by Borrower with any Governmental Authority, all internet domain name registrations owned by Borrower, and all proprietary software owned by Borrower, in each case, solely as related to the FC2 Product.

Required Lenders means Lenders having an aggregate Pro Rata Term Loan Share in excess of fifty percent (50%), collectively.

Required Permit means a Permit (a) required under applicable law to the FC2 Business or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of the FC2 Product under any laws applicable to the business of Borrower (including, without limitation, any Health Care Laws) or any Device Application (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of the FC2 Product by Borrower or any of its Affiliates as such activities are being conducted by Borrower or its Affiliates with respect to the FC2 Product at such time), and (b) required by any Person from which Borrower or any of its Affiliates have received an accreditation relative to the FC2 Business.

Residual Royalty Agreement means the Residual Royalty Agreement dated as of the Closing Date by and between Borrower and SWK.

Responsible Officer shall mean the president, vice president or secretary of a Person, or any other officer having substantially the same authority and responsibility; or, with respect to compliance with financial covenants or delivery of financial information, the chief financial officer, the treasurer or the controller of a Person, or any other officer having substantially the same authority and responsibility, and in all cases such person shall be listed on an incumbency certificate delivered to Agent, in form and substance acceptable to Agent in its sole discretion.

Return Premium means, as of any date of determination, an amount equal to the sum (if positive) of: (a) Revenue-Based Cap~~minus~~ (b) all Revenue-Based Payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date, minus (c) the outstanding principal amount of the Loans as of such date.

Revenue-Based Cap means, as of any date of determination, an amount equal to one and three-quarters (1.75) times the aggregate amount of the Term Loan actually advanced by Lenders pursuant to Section 2.2 hereof on or prior to such date.

Revenue-Based Payment has the meaning set forth in Section 2.9.1(a).

Royalties means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by Borrower with respect to the sale of the FC2 Product or the provision of services by independent licensees of Borrower relative to the FC2 Product and/or FC2 Business, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, Lenders and Agent understand and agree that Affiliates of Borrower shall not be regarded as independent licensees.

SEC means the U.S. Securities and Exchange Commission.

Services means services relating exclusively to the FC2 Product provided by Borrower or any Affiliate of Borrower to un-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

Solvent means, as to any Person at any time, that (a) the fair value of the property of such Person is greater than the amount of such Person's liabilities (including disputed, contingent, unmatured and unliquidated liabilities); (b) the present fair saleable value of the property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person is able to pay its debts and other liabilities (including subordinated, disputed, contingent, unmatured and unliquidated liabilities) as they mature in the normal course of business; (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay as such debts and liabilities mature; and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital.

Subsidiary means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of Borrower.

Subsidiary Net Cash Proceeds means, with respect to any Disposition, the aggregate cash proceeds (including cash proceeds received pursuant to policies of insurance (other than business interruption insurance) and by way of deferred payment of principal pursuant to a note, installment receivable or otherwise, but only as and when received) received by any Subsidiary of Borrower pursuant to such Disposition net of (i) the reasonable direct costs relating to such Disposition (including sales commissions and legal, accounting and investment banking fees, commissions and expenses), (ii) any portion of such proceeds deposited in an escrow account pursuant to the documentation relating to such Disposition (*provided* that such amounts shall be treated as Net Cash Proceeds upon their release from such escrow account to and receipt by such Subsidiary), (iii) taxes and other governmental costs and expenses paid or reasonably estimated by such Subsidiary to be payable as a result thereof (after taking into account any available tax credits or deductions and any tax sharing arrangements), (iv) amounts

required to be applied to the repayment of any Debt (together with any interest thereon, premium or penalty and any other amount payable with respect thereto) secured by a Lien that has priority over the Lien, if any, of Agent on the asset subject to such Disposition, (v) reserves for purchase price adjustments and retained liabilities reasonably expected to be payable by such Subsidiary in connection therewith established in accordance with GAAP (*provided* that upon the final determination of the amount paid in respect of such purchase price adjustments and retained liabilities, the actual amount of purchase price adjustments and retained liabilities paid is less than such reserves, the difference shall, at such time, constitute Net Cash Proceeds) and (vi)(A) with respect to any Disposition described in clauses (a), (b) or (c) of the definition thereof, all money actually applied within one-hundred eighty (180) days to repair or replace such assets to be used in the business of such Subsidiary, and (B) with respect to any Disposition, all money actually applied within one-hundred eighty (180) days to replace the assets in question or to repair or reconstruct damaged property or property affected by loss, destruction, damage, condemnation, confiscation, requisition, seizure or taking.

Subsequent Term Loan A means the Term Loan made to the Borrower pursuant to Section 2.2.2.

Subsequent Term Loan B means the Term Loan made to the Borrower pursuant to Section 2.2.3.

SWK has the meaning set forth in the Preamble.

Taxes has the meaning set forth in Section 3.1(a).

Term Loan has the meaning set forth in Section 2.1, and shall, for the avoidance of doubt, include Subsequent Term Loan A and Subsequent Term Loan B to the extent the same are advanced hereunder.

Term Loan Commitment means \$12,000,000.

Termination Date means the earlier to occur of (a) March 5, 2025, or (b) the date upon which the Loan and all other Obligations are Paid in Full, whether as a result of (i) the prepayment of the Term Loan and all Obligations through (x) the application of Net Cash Proceeds from any Disposition, or (y) any other mandatory prepayment of the Term Loan in full, (ii) the contractual acceleration of the Loan hereunder, (iii) the acceleration of the Loan by Agent in accordance with this Agreement, or (iv) otherwise.

Trademarks shall mean all of each Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to, the following, in each case, solely related to the FC2 Product: (a) all of Borrower's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (b) all renewals thereof; and (c) all designs and general intangibles of a like nature.

Uniform Commercial Code means the Uniform Commercial Code as in effect in the State of New York; *provided* that if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, "Uniform Commercial Code" means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.



U.S. Lender means any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the IRC.

1.2 Interpretation.

(a) In the case of this Agreement and each other Loan Document, (a) the meanings of defined terms are equally applicable to the singular and plural forms of the defined terms; (b) Annex, Exhibit, Schedule and Section references are to such Loan Document unless otherwise specified; (c) the term “including” is not limiting and means “including but not limited to”; (d) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including”; (e) unless otherwise expressly provided in such Loan Document, (i) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments, restatements and other modifications thereto, but only to the extent such amendments, restatements and other modifications are not prohibited by the terms of any Loan Document, and (ii) references to any statute or regulation shall be construed as including all statutory and regulatory provisions amending, replacing, supplementing or interpreting such statute or regulation; (f) this Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters, all of which are cumulative and each shall be performed in accordance with its terms and (g) this Agreement and the other Loan Documents are the result of negotiations among and have been reviewed by counsel to Agent, Borrower, Lenders and the other parties hereto and thereto and are the products of all parties; accordingly, they shall not be construed against Borrower, Agent or Lenders merely because of Borrower’s, Agent’s or Lenders’ involvement in their preparation. Except where otherwise expressly provided in the Loan Documents, in any instance where the approval, consent or the exercise of Agent’s judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be (x) within the sole and absolute discretion of Agent and/or Lenders; and (y) deemed to have been given only by a specific writing intended for such purpose executed by Agent.

(b) For purposes of converting any amount reported or otherwise denominated in any currency other than Dollars to Dollars under or in connection with the Loan Documents, Agent shall calculate such currency conversion via the applicable exchange rate identified and normally published by Bloomberg Professional Service as the applicable exchange rate as of the close of currency trading on each trading date during the applicable period of measurement, or, if such currency conversion deals exclusively with a particular date of determination, as of the close of currency trading on such date of determination (or the following trading date to the extent no currency trading took place on such date of determination). If Bloomberg Professional Service no longer reports such currency exchange rate, Agent shall select another nationally-recognized currency exchange rate reporting service selected by Agent in good faith.

Section 2 Credit Facility.

2.1 Term Loan Commitments.

On and subject to the terms and conditions of this Agreement, each Lender, severally and for itself alone, agrees to make a multi-draw term loan to Borrower (each such loan, individually and collectively, a “Term Loan”) in an amount equal to such Lender’s applicable Pro Rata Term Loan Share of the Term Loan Commitment. The Commitments of Lenders to make any portion of the Term Loan shall terminate concurrently with the making of such portion of the Term Loan, such portion terminated to equal (i) on the Closing Date, the amount of such Term Loan, (ii) on the date of the making of the Subsequent Term Loan A, the amount of the Subsequent Term Loan A, and (iii) on the date of the making of the Subsequent Term Loan B, the amount of the Subsequent Term Loan B. The Loan is not a revolving credit facility, and therefore any amount thereof that is repaid or prepaid by Borrower, in whole or in part, may not be re-borrowed.

---

## 2.2 Loan Procedures.

### 2.2.1 Initial Advance.

On the Closing Date, Lenders shall advance to Borrower an amount equal to Ten Million and No/100 Dollars (\$10,000,000), upon Borrower's satisfaction of the conditions to closing described in Section 4 of this Agreement.

### 2.2.2 Subsequent Term Loan A.

At any time after the Closing Date, provided that no Material Adverse Effect, Default or Event of Default has occurred and is continuing, upon (a) execution by the Borrower of an agreement with Semina Indústria e Comércio Ltda or an Affiliate thereof or any applicable Governmental Authority of Brazil for distribution of at least 47,500,000 units of the FC2 Product and otherwise on terms substantially in accordance with the projections provided to Agent on December 7, 2018, and (b) Agent's receipt of a written request from Borrower for a subsequent advance of the Term Loan, Lenders shall make one (1) additional advance (within five (5) Business Days of receipt by Agent of such written request for advance) to Borrower in the aggregate amount equal to, but not less than, One Million and No/100 Dollars (\$1,000,000).

### 2.2.3 Subsequent Term Loan B.

At any time after the Closing Date, provided that no Material Adverse Effect, Default or Event of Default has occurred and is continuing, upon (a) execution by the Borrower of an agreement with one or more of its Republic of South Africa based distributors for distribution of at least 30,000,000 units of the FC2 Product, and (b) Agent's receipt of a written request from Borrower for a subsequent advance of the Term Loan, Lenders shall make one (1) additional advance (within five (5) Business Days of receipt by Agent of such written request for advance) to Borrower in the aggregate amount equal to, but not less than, One Million and No/100 Dollars (\$1,000,000).

## 2.3 Commitments Several.

The failure of any Lender to make the initial Term Loan on the Closing Date, the Subsequent Term Loan A in accordance with Section 2.2.2 above, or the Subsequent Term Loan B in accordance with Section 2.2.3 above shall not relieve any other Lender of its obligation (if any) to make a Loan on the applicable date, but no Lender shall be responsible for the failure of any other Lender to make any Term Loan to be made by such other Lender.

## 2.4 Indebtedness Absolute; No Offset; Waiver.

The payment obligations of Borrower hereunder are absolute and unconditional, without any right of rescission, setoff, counterclaim or defense for any reason against Agent and Lenders. As of the Closing Date, the Loan has not been compromised, adjusted, extended, satisfied, rescinded, set-off or modified, and the Loan Documents are not subject to any litigation, dispute, refund, claims of rescission, setoff, netting, counterclaim or defense whatsoever, including but not limited to, claims by or against any Loan Party or any other Person. Payment of the Obligations by Borrower, shall be made only by wire transfer, in Dollars, and in immediately available funds when due and payable pursuant to the terms of this Agreement and the other Loan Documents, is not subject to compromise, adjustment, extension,

satisfaction, rescission, set-off, counterclaim, defense, abatement, suspension, deferment, deductible, reduction, termination or modification, whether arising out of transactions concerning the Loan, or otherwise. Without limitation to the foregoing, to the fullest extent permitted under applicable law and notwithstanding any other term or provision contained in this Agreement or any other Loan Document, Borrower hereby waives (and shall cause each Loan Party to waive) (a) presentment, protest and demand, notice of default (except as expressly required in the Loan Documents), notice of intent to accelerate, notice of acceleration, notice of protest, notice of demand and of dishonor and non-payment of the Obligations, (b) any requirement of diligence or promptness on Agent's part in the enforcement of its rights under the provisions of this Agreement and any other Loan Document, (c) any rights, legal or equitable, to require any marshalling of assets or to require foreclosure sales in a particular order, (d) all notices of every kind and description which may be required to be given by any statute or rule of law except as specifically required hereunder, (e) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisal before sale or any portion of the Collateral, (f) all rights of homestead, exemption, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Obligations in the event of foreclosure of the Liens created by the Loan Documents, (g) the pleading of any statute of limitations as a defense to any demand under any Loan Document and (h) any defense to the obligation to make any payments required under the Loan Documents, including the obligation to pay taxes based on any damage to, defects in or destruction of the Collateral or any other event, including obsolescence of any of the Collateral, it being agreed and acknowledged that such payment obligations are unconditional and irrevocable. Borrower further acknowledges and agrees (i) to any substitution, subordination, exchange or release of any security or the release of any party primarily or secondarily liable for the payment of the Loan; (ii) that Agent shall not be required to first institute suit or exhaust its remedies hereon against others liable for repayment of all or any part of the Loan, whether primarily or secondarily (collectively, the "Obligors"), or to perfect or enforce its rights against any Obligor or any security for the Loan; and (iii) that its liability for payment of the Loan shall not be affected or impaired by any determination that any security interest or lien taken by Agent for the benefit of Lenders to secure the Loan is invalid or unperfected. Borrower acknowledges, warrants and represents in connection with each waiver of any right or remedy of Borrower contained in any Loan Document, that it has been fully informed with respect to, and represented by counsel of its choice in connection with, such rights and remedies, and all such waivers, and after such advice and consultation, has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive or relinquish such rights and remedies to the full extent specified in each such waiver.

## 2.5 Loan Accounting.

### 2.5.1 Recordkeeping.

Agent, on behalf of each Lender, shall record in its records the date and amount of the Loan made by each Lender, each prepayment and repayment thereof. The aggregate unpaid principal amount so recorded shall be final, binding and conclusive absent manifest error. The failure to so record any such amount or any error in so recording any such amount shall not, however, limit or otherwise affect the Obligations of Borrower hereunder or under any Note to repay the principal amount of the Loans hereunder, together with the Return Premium.

### 2.5.2 Notes.

At the request of any Lender, the Loan of such Lender shall be evidenced by a Note, with appropriate insertions, payable to the order of such Lender in a face principal amount equal to such Lender's Pro Rata Term Loan Share and payable in such amounts and on such dates as are set forth herein.

2.6 [Reserved].

2.7 Return Premium.

Upon the Payment in Full of the Loan and all other Obligations (other than pursuant to a voluntary prepayment in full pursuant to Section 2.8.2 hereof), whether as a result of the application of Net Cash Proceeds from any Disposition, the contractual acceleration of the Loan hereunder, an acceleration of the Loan by Agent in accordance with this Agreement or otherwise, Borrower shall pay to Agent, for the benefit of Lenders, an amount equal to the Return Premium as of such date of determination.

2.8 Prepayment.

2.8.1 Mandatory Prepayment. Borrower shall prepay the Obligations (which shall include the amounts due and payable under Section 2.7 hereof but shall exclude amounts owing under the Residual Royalty Agreement) until paid in full within two (2) Business Days after the receipt by a Loan Party of any Net Cash Proceeds from any Disposition, in an amount equal to such Net Cash Proceeds.

2.8.2 Change of Control/Sale of FC2 Product

Upon a Change of Control or sale of the FC2 Business to a third-party, non-Affiliate of Borrower, Borrower shall immediately pay to Agent, for the benefit of Lenders, an amount equal to (a) all unpaid and outstanding Obligations due and owing as of such date of determination (other than the Return Premium and amounts owing under the Residual Royalty Agreement) plus (b) such additional amount necessary to cause Agent, for the benefit of Lenders, to have received a prepayment fee (the "Prepayment Fee") calculated as the additional amount that would be needed to be paid such that the sum of (x) such Prepayment Fee, plus (y) the aggregate payments actually made in cash to Agent, for the benefit of Lenders, on or prior to such date in respect of the principal amount of the Loans (specifically including any payments made pursuant to Section 2.8.1), plus (z) without duplication of clause (y), all Revenue-Based Payments actually made in cash to all Lenders on or prior to such date (excluding, for the avoidance of doubt, any amounts paid in respect of any costs, expenses, indemnifications or reimbursements, other than the Prepayment Fee) equals (i) if such prepayment is made on or after the Closing Date but prior to the six (6) month anniversary of the Closing Date, an amount equal to one and sixty-five one-hundredths (1.65) times the aggregate amounts actually advanced by Lenders pursuant to Section 2.2 hereof on or prior to such date; or (ii) if such prepayment is made on or after the six (6) month anniversary of the Closing Date, (A) the Revenue-Based Cap, plus (B) the greater of (1) \$2,000,000 or (2) the product of (x) five percent (5.00%) of the Net Sales attributable to the FC2 Product for the most recently-completed twelve (12) months period, multiplied by (y) five (5).

2.9 Repayment of Term Loan.

2.9.1 Revenue-Based Payment.

(a) During the period commencing on the date hereof until the Obligations are Paid in Full, Borrower promises to pay to Agent, for the account of each Lender according to its Pro Rata Term Loan Share, an amount based on a percentage of the aggregate of the Net Sales, Royalties and any other income or revenue realized by Borrower solely related to or arising from the FC2 Product, in accordance with GAAP (collectively, the "Product Revenue") in each Fiscal Quarter (the "Revenue-Based Payment"), which will be applied to the Obligations as provided in clause (c) below. The Revenue-Based Payment with respect to each Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter. Commencing with the Fiscal Quarter beginning January 1, 2018, the Revenue-Based Payment with respect to each Fiscal Quarter during which no Event of Default has occurred and is continuing as of the applicable Payment Date shall be equal to:

(i) the aggregate Revenue-Based Payments payable during the period commencing as of January 1 of the Fiscal Year of which such Fiscal Quarter is part, through the end of such Fiscal Quarter (such elapsed portion of the Fiscal Year, the "Elapsed Period"), calculated as,

(A) if the Product Revenue for the twelve (12) month period ended as of the last day of such Fiscal Quarter is less than \$10,000,000, then thirty-two and one-half of one percent (32.50%) of Product Revenue during the Elapsed Period; or

(B) if the Product Revenue for the twelve (12) month period ended as of the last day of such Fiscal Quarter is equal to or greater than \$10,000,000, the sum of:

(1) Twenty-five percent (25.00%) of Product Revenue during the Elapsed Period up to and including \$12,500,000; plus

(2) Ten percent (10.00%) of Product Revenue during the Elapsed Period greater than \$12,500,000; minus

(ii) the aggregate amount of Revenue-Based Payments, if any, made with respect to prior Fiscal Quarters in such Fiscal Year; *provided* that the Revenue-Based Payment is payable solely upon Product Revenue in a given Fiscal Year, and will not be calculated on a cumulative, year-over-year basis.

(b) For any Fiscal Quarter during which an Event of Default has occurred and is continuing, the amount of the Revenue-Based Payment with respect to such Fiscal Quarter shall be calculated as the sum of:

(i) the amount that would otherwise be required to be paid with respect to such Fiscal Quarter as calculated pursuant to Section 2.9.1(a); plus

(ii) an additional amount that would be needed to be paid such that the sum of the payments under the foregoing clause (i) and this clause (ii) equals one hundred ten percent (110%) of the amount that would otherwise be required to be paid with respect to such Fiscal Quarter as calculated pursuant to Section 2.9.1(a) (the amount payable under this clause (ii) is referred to as the "Default Premium").

Borrower recognizes and acknowledges that any Event of Default will result in losses and additional expenses to Agent and Lenders. Borrower further acknowledges and agrees that in the event of any such Event of Default, Agent and Lenders would be entitled to damages for the detriment proximately caused thereby, but that it would be extremely difficult and impracticable to ascertain the extent of or compute such damages. Therefore, upon occurrence and during the existence of an Event of Default, Revenue-Based Payments shall, without notice to any Loan Party, be calculated as set forth in this Section 2.9.1(b) to the maximum extent permitted by law.

(c) So long as no Event of Default has occurred and is continuing and until the Obligations have been Paid in Full, each Revenue-Based Payment on each Payment Date will be applied in the following priority:

(i) FIRST, to the payment of all fees, costs, expenses and indemnities due and owing to Agent pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all fees, costs, expenses and indemnities due and owing to Lenders in respect of the Loans and Commitments pursuant to Sections 2.7, 3.1, 3.2, 6.3(d), 10.4 and/or 10.5 under this Agreement or otherwise pursuant to the Collateral Documents, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iii) THIRD, to the payment of all unpaid principal of the Loans, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full;

(iv) FOURTH, to the payment of the Return Premium, pro rata based on each Lender's Pro Rata Term Loan Share, until Paid in Full; and

(v) FIFTH, all remaining amounts to the Borrower.

In the event that the amounts distributed under this clause (c) on any Payment Date are insufficient for payment of the amounts set forth in clauses (i) through (v) above for such Payment Date, Borrower shall pay an amount equal to the extent of such insufficiency within five (5) Business Days of request by Agent.

(d) In the event that Borrower makes any adjustment to Product Revenue after it has been reported to Agent, and such adjustment results in an adjustment to the Revenue-Based Payment due to the Lenders pursuant to this Section 2.9.1, Borrower shall so notify Agent and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, Agent and Borrower shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments.

#### 2.9.2 Principal.

Notwithstanding the foregoing, the outstanding principal balance of the Term Loan and all other Obligations (including the Return Premium but excluding amounts owing under the Residual Royalty Agreement) then due and owing shall be Paid in Full on the Termination Date.

#### 2.10 Payment.

##### 2.10.1 Making of Payments.

Except as set forth in the last sentence of this Section 2.10.1, all payments of principal, Return Premium, fees and other amounts, shall be made in immediately-available funds, via wire or ACH transfer as directed by Agent in writing, not later than 1:00 p.m. Dallas time on the date due, and funds received after that hour shall be deemed to have been received by Agent on the following Business Day. Not later than two (2) Business Days prior to each Payment Date, Agent shall provide to Borrower and each Lender a quarterly statement with the amounts payable by Borrower to Agent on such Payment Date in accordance with Section 2.9.1(c) hereof, which shall include, for additional clarity, Agent's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding on Borrower absent manifest error, and Borrower shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

#### 2.10.2 Application of Payments and Proceeds Following an Event of Default

Following the occurrence and during the continuance of an Event of Default, or if the Obligations have otherwise become or have been declared to become immediately due and payable in accordance with this Agreement, then notwithstanding anything herein or in any other Loan Document to the contrary, Agent shall apply all or any part of payments in respect of the Obligations and proceeds of Collateral, in each case as received by Agent, to the payment of the Obligations (other than amounts owing under the Residual Royalty Agreement) in the order and priority as determined by Agent in its sole discretion.

#### 2.10.3 Set-off.

Borrower agrees that Agent and each Lender and its Affiliates have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, Borrower agrees that at any time an Event of Default exists, Agent and each Lender may, to the fullest extent permitted by applicable law, apply to the payment of any Obligations of Borrower hereunder then due, any and all balances, credits, deposits, accounts or moneys of Borrower then or thereafter with Agent or such Lender. Notwithstanding the foregoing, no Lender shall exercise any rights described in the preceding sentence without the prior written consent of Agent.

#### 2.10.4 Proration of Payments.

If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of set-off or otherwise, on account of principal of, or Prepayment Fee with respect to, any Loan, or in respect of the Return Premium, but excluding any payment pursuant to Section 3.1, 3.2, 10.5 or 10.8) in excess of its applicable Pro Rata Term Loan Share of payments and other recoveries obtained by all Lenders on account of principal of, or Prepayment Fee with respect to, such Term Loan then held by them, or in respect of the Return Premium, then such Lender shall purchase from the other Lenders such participations in the Loans held by them as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided* that if all or any portion of the excess payment or other recovery is thereafter recovered from such purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery.

### Section 3 Yield Protection.

#### 3.1 Taxes.

(a) All payments of principal on, and Return Premium related to, the Loans and all other amounts payable hereunder by or on behalf of Borrower to or for the account of Agent or any Lender shall be made free and clear of and without deduction for any present or future income, excise, stamp, documentary, property or franchise taxes and other taxes, fees, duties, levies, withholdings or other similar charges imposed by any Governmental Authority that is a taxing authority ("Taxes"), excluding (i) taxes imposed on or measured by Agent's or any Lender's net income (however denominated) or gross profits, and franchise taxes, imposed by any jurisdiction (or subdivision thereof) under the laws of which Agent or such Lender is organized or in which Agent or such Lender conducts business or with which the Agent or Lender has a present or former connection, or, in the case of any Lender, in which its applicable lending office is located, (ii) any branch profit taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which Agent or a Lender is located or conducts business;

(iii) in the case of any Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement or designates a new lending office; (iv) in the case of any U.S. Lender, any United States federal backup withholding tax; (v) Taxes attributable to any Lender's failure to comply with Section 3.1(c), and (vi) taxes imposed under FATCA (items in clauses (i) through (vi), "Excluded Taxes", and all Taxes other than Excluded Taxes, "Indemnified Taxes"). If any withholding or deduction from any payment to be made by Borrower hereunder is required in respect of any Taxes pursuant to any applicable law, rule or regulation, then Borrower shall: (w) make such withholding or deduction; (x) pay directly to the relevant Governmental Authority the full amount required to be so withheld or deducted; (y) as promptly as practicable forward to Agent the original or a certified copy of an official receipt or other documentation reasonably satisfactory to Agent evidencing such payment to such Governmental Authority; and (z) if the withholding or deduction is with respect to Indemnified Taxes, pay to Agent for the account of Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by each Lender will equal the full amount such Lender would have received had no such withholding or deduction of Indemnified Taxes been required. To the extent that any amounts shall ever be paid by Borrower in respect of Indemnified Taxes, such amounts shall, for greater certainty, be considered to have accrued and to have been paid by Borrower as interest on the Loans.

(b) Borrower shall indemnify Agent and each Lender for any Indemnified Taxes paid by Agent or such Lender, as applicable, on or with respect to any payment by or on account of any obligation of Borrower hereunder, and any additions to Tax, penalties and interest paid by Agent or such Lender with respect to such Indemnified Taxes; *provided* that Borrower shall not have any obligation to indemnify any party hereunder for any Indemnified Taxes or additions to Tax, penalties or interest with respect thereto that result from or are attributable to such party's own gross negligence or willful misconduct. Payment under this Section 3.1(b) shall be made within thirty (30) days after the date Agent or the Lender, as applicable, makes written demand therefor; *provided, however*, that if such written demand is made more than one-hundred eighty (180) days after the earlier of (i) the date on which Agent or the Lender, as applicable, pays such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto and (ii) the date on which the applicable Governmental Authority makes written demand on Agent or such Lender, as applicable, for payment of such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto, then Borrower shall not be obligated to indemnify Agent or such Lender for such Indemnified Taxes or additions to Tax, penalties or interest with respect thereto.

(c) Each Foreign Lender that is a party hereto on the Closing Date or becomes an assignee of an interest under this Agreement under Section 10.8.1 after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) shall deliver to Borrower and Agent on or prior to the date on which such Foreign Lender becomes a party to this Agreement:

(i) Two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE) claiming exemption from withholding of Taxes under an income tax treaty to which the United States of America is a party;

(ii) two duly completed and executed originals of IRS Form W-8ECI;

(iii) a certificate in form and substance reasonably satisfactory to Agent and Borrower claiming entitlement to the portfolio interest exemption under Section 881(c) of the IRC and certifying that such Foreign Lender is not (x) a "bank" within the meaning of Section 881(c)(3)(A) of the IRC, (y) a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the IRC, or (z) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the IRC, together with two duly completed and executed originals of IRS Form W-8BEN (or IRS Form W-8BENE); or



(iv) if the Foreign Lender is not the beneficial owner of amounts paid to it hereunder, two duly completed and executed originals of IRS Form W-8IMY, each accompanied by a duly completed and executed IRS Form W-8ECI, IRS Form W-8BEN (or IRS Form W-8BENE), IRS Form W-9 or a portfolio interest certificate described in clause (iii) above from each beneficial owner of such amounts claiming entitlement to exemption from withholding or backup withholding of Taxes.

Each Foreign Lender shall (to the extent legally entitled to do so) provide updated forms to Borrower and Agent on or prior to the date any prior form previously provided under this clause (c) becomes obsolete or expires, after the occurrence of an event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c) or from time to time if requested by Borrower or Agent. Each U.S. Lender shall deliver to Agent and Borrower on or prior to the date on which such Lender becomes a party to this Agreement (and from time to time thereafter upon the request of Borrower or Agent) properly completed and executed originals of IRS Form W-9 certifying that such Lender is exempt from backup withholding. Notwithstanding anything to the contrary contained in this Agreement, Borrower shall not be required to pay additional amounts to or indemnify any Lender pursuant to this Section 3.1 with respect to any Taxes required to be deducted or withheld (or any additions to Tax, penalties or interest with respect thereto) (A) on the basis of the information, certificates or statements of exemption provided by a Lender pursuant to this clause (c), or (B) if such Lender shall fail to comply with the certification requirements of this clause (c).

(d) Without limiting the foregoing, each Lender shall timely comply with any certification, documentation, information or other reporting necessary to establish an exemption from withholding under FATCA and shall provide any documentation reasonably requested by Borrower or Agent sufficient for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such applicable reporting requirements.

(e) If Agent or a Lender determines that it is entitled to or has received a refund of any Taxes for which it has been indemnified by Borrower (or another Loan Party) or with respect to which Borrower (or another Loan Party) shall have paid additional amounts pursuant to this Section 3.1, it shall promptly notify Borrower of such refund, and promptly make an appropriate claim to the relevant Governmental Authority for such refund (if it has not previously done so). If Agent or a Lender receives a refund (whether or not pursuant to such claim) of such Taxes, it shall promptly pay over such refund to Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by Loan Parties under this Section 3.1 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses of the Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that Borrower, upon the request of Agent or such Lender, agrees to repay to Agent or such Lender the amount paid over to Borrower in the event Agent or such Lender is required to repay such refund to such Governmental Authority. This Section 3.1(e) shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to Borrower or any other Person or to alter its internal practices or procedures with respect to the administration of Taxes.

### 3.2 Increased Cost.

(a) If, after the Closing Date, the adoption of, or any change in, any applicable law, rule or regulation, or any change in the interpretation or administration of any applicable law, rule or regulation by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof (*provided* that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith shall be considered a change in applicable law,

regardless of the date enacted, adopted or issued), or compliance by any Lender with any request or directive (whether or not having the force of law) issued after the Closing Date of any such authority, central bank or comparable agency shall impose, modify or deem applicable any reserve (including any reserve imposed by the FRB), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by any Lender, and the result of anything described above is to increase the cost to (or to impose a cost on) such Lender of making or maintaining any loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or under its Note with respect thereto, then upon 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), and without duplication of other payment obligations of Borrower hereunder (including pursuant to Section 3.1), Borrower shall pay directly to such Lender such additional amount as will compensate such Lender for such increased cost or such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect. For the avoidance of doubt, this clause (a) will not apply to any such increased costs or reductions resulting from Taxes, as to which Section 3.1 shall govern.

(b) If any Lender shall reasonably determine that any change after the Closing Date in, or the adoption or phase-in after the Closing Date of, any applicable law, rule or regulation regarding capital adequacy, or any change after the Closing Date in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or the compliance by any Lender or any Person controlling such Lender with any request or directive issued after the Closing Date regarding capital adequacy (whether or not having the force of law) of any such authority, central bank or comparable agency, 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 change, adoption, phase-in or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) by an amount deemed by such Lender or such controlling Person to be material, then from time to time, within five (5) Business Days of 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 pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is one-hundred eighty (180) days prior to the date on which such Lender first made demand therefor; *provided* that if the event giving rise to such costs or reductions has retroactive effect, such one-hundred eighty (180) day period shall be extended to include the period of retroactive effect.

(c) Each Lender agrees that, as promptly as practicable after the officer of such Lender responsible for administering its Loans, becomes aware of the occurrence of an event or the existence of a condition that would entitle such Lender to receive payments under this Section 3.2, it will, to the extent not inconsistent with the internal policies of such Lender and any applicable legal or regulatory restrictions, use reasonable efforts to (i) make, issue, fund or maintain its Loans through another office of such Lender, or (ii) take such other measures as such Lender may deem reasonable, if as a result thereof the additional amounts which would otherwise be required to be paid to such Lender pursuant to this Section 3.2 would be materially reduced and if, as determined by such Lender in its sole discretion, the making, issuing, funding or maintaining of such Loans through such other office or in accordance with such other measures, as the case may be, would not otherwise adversely affect such Loans or the interests of such Lender; *provided* that such Lender will not be obligated to utilize such other office pursuant to this clause (c) unless Borrower agrees to pay all incremental expenses incurred by such Lender as a result of utilizing such other office as described above. A certificate as to the amount of any such expenses payable by Borrower pursuant to this clause (c) (setting forth in reasonable detail the basis for requesting such amount) submitted by such Lender to Borrower (with a copy to Agent) shall be conclusive absent manifest error.

3.3 [Reserved].

3.4 Manner of Funding; Alternate Funding Offices

Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain its funding of all or any part of its Loans in any manner it may determine at its sole discretion. Each Lender may, if it so elects, fulfill its commitment to make any Term Loan by causing any branch or Affiliate of such Lender to make such Loan; *provided* that in such event for the purposes of this Agreement (other than Section 3.1) such Loan shall be deemed to have been made by such Lender and the obligation of Borrower to repay such Loan shall nevertheless be to such Lender and shall be deemed held by it, to the extent of such Loan, for the account of such branch or Affiliate.

3.5 Conclusiveness of Statements; Survival.

Determinations and statements of any Lender pursuant to Section 3.1, 3.2, 3.3 or 3.4 shall be conclusive absent demonstrable error. Lenders may use reasonable averaging and attribution methods in determining compensation under Sections 3.1 or 3.2, and the provisions of such Sections shall survive repayment of the Loans, cancellation of the Notes and termination of this Agreement.

Section 4 Conditions Precedent.

The obligation of each Lender to make its Loan hereunder is subject to the following conditions precedent, each of which shall be reasonably satisfactory in all respects to Agent.

4.1 Prior Debt.

The Prior Debt has been (or concurrently with the initial borrowing will be) paid in full and all related Liens have been (or concurrently with the initial borrowing will be) released.

4.2 Delivery of Loan Documents.

Borrower shall have delivered the following documents in form and substance acceptable to Agent in its sole discretion (and, as applicable, duly executed and dated the Closing Date or an earlier date satisfactory to Agent):

(a) Loan Documents. The Loan Documents to which any Loan Party is a party, each duly executed by a Responsible Officer of each Loan Party and the other parties thereto (except Agent and the Lenders), and each other Person (except Agent and the Lenders) shall have delivered to Agent and Lenders the Loan Documents to which it is a party, each duly executed and delivered by such Person and the other parties thereto (except Agent and the Lenders).

(b) Financing Statements. Properly completed Uniform Commercial Code financing statements and other filings and documents required by law or the Loan Documents to provide Agent, for the benefit of Lenders, perfected first priority Liens in the Collateral.

(c) Lien Searches. Copies of Uniform Commercial Code, foreign, state and county search reports listing all effective financing statements filed and other Liens of record against any Loan Party, with copies of any financing statements and applicable searches of the records of the U.S. Patent and Trademark Office and the U.S. Copyright Office performed with respect to each Loan Party, all in each jurisdiction reasonably determined by Agent.

(d) [Reserved].

(e) Payoff; Release. Payoff letters with respect to the repayment in full of all Prior Debt, termination of all agreements relating thereto and subject to the Post-Closing Agreement, the release of all Liens granted in connection therewith, with Uniform Commercial Code or other appropriate termination statements and documents effective to evidence the foregoing or authorization to file the same.

(f) Authorization Documents. For each Loan Party, such Person's (i) charter (or similar formation document), certified by the appropriate Governmental Authority, (ii) good standing certificates in its jurisdiction of incorporation (or formation) and in each other jurisdiction reasonably requested by Agent, (iii) bylaws (or similar governing document), (iv) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby, and (v) signature and incumbency certificates of its officers executing any of the Loan Documents, all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification, in form and substance reasonably satisfactory to Agent.

(g) Closing Certificate. A certificate executed by a Responsible Officer of Borrower, which shall constitute a representation and warranty by Borrower as of the Closing Date that the conditions contained in this Section 4 have been satisfied.

(h) Opinions of Counsel. Opinions of counsel for each Loan Party regarding certain closing matters, and Borrower hereby requests such counsel to deliver such opinions and authorizes Agent and Lenders to rely thereon.

(i) Insurance. Certificates or other evidence of insurance in effect as required by Section 6.3(c) and (d), with endorsements naming Agent as lenders' loss payee and/or additional insured, as applicable.

(j) Solvency Certificate. Agent shall have received a certificate of the chief financial officer (or, in the absence of a chief financial officer, the chief executive officer or manager) of Borrower, in his or her capacity as such and not in his or her individual capacity, in form and substance reasonably satisfactory to Agent, certifying that Borrower is Solvent after giving effect to the transactions and the indebtedness contemplated by the Loan Documents.

(k) Financials. The financial statements, projections and pro forma balance sheet described in Section 5.4.

(l) [Reserved].

(m) Consents. Evidence that all necessary consents, permits and approvals (governmental or otherwise) required for the execution, delivery and performance by each Loan Party of the Loan Documents have been duly obtained and are in full force and effect.

(n) Other Documents. Such other certificates, documents and agreements as Agent or any Lender may reasonably request.

#### 4.3 Fees.

The Lenders and Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of their legal counsel), required to be paid under the Loan Documents on or before the Closing Date. All such amounts will be paid with proceeds of the initial advance of the Term Loan and any previous expense deposits made with Agent on or before the Closing Date and will be reflected in the funding instructions given by Borrower to Agent on or before the Closing Date.

#### 4.4 Residual Royalty Agreement.

Agent shall have received the fully executed Residual Royalty Agreement.

#### 4.5 Representations, Warranties, Defaults.

As of the Closing Date, after giving effect to the making of the Loan, (a) all representations and warranties of Borrower set forth in any Loan Document shall be true and correct in all material respects as if made on and as of the Closing Date (except for representations and warranties that specifically refer to an earlier date, which shall be true and correct in all material respects as of such earlier date) and (b) no Default, Event of Default shall exist. The acceptance of the Term Loan by Borrower shall be deemed to be a certification by Borrower that the conditions set forth in this Section 4.5 have been satisfied.

#### 4.6 Diligence.

Agent and Lenders shall have completed their due diligence review of the Loan Parties and their Subsidiaries, their assets, business, obligations and the transactions contemplated herein, the results of which shall be satisfactory in form and substance to Lenders, including, without limitation, (i) an examination of (A) Borrower's projected Product Revenue for such periods as required by Lenders, (B) such valuations of Borrower and its assets as Lenders shall require (C) the terms and conditions of all obligations owed by Borrower deemed material by Lenders, the results of which shall be satisfactory in form and substance to Lenders and (D) background checks with respect to the managers, officers and owners of Borrower required by Agent; (ii) an examination of the Collateral, the financial statements and the books, records, business, obligations, financial condition and operational state of Borrower, and Borrower shall have demonstrated to Agent's satisfaction, in its sole discretion, that no operations of Borrower are the subject of any governmental investigation, evaluation or any remedial action which could result in a Material Adverse Effect.

#### 4.7 Corporate Matters.

All corporate and other proceedings, documents, instruments and other legal matters in connection with the transactions contemplated by the Loan Documents (including, but not limited to, those relating to corporate and capital structures of Borrower) shall be satisfactory to Lenders in their sole discretion.

#### 4.8 No Felonies or Indictable Offenses.

No Loan Party nor, to Borrower's knowledge, any of their respective Affiliates nor any of their officers or key management personnel shall have been charged with or be under active investigation for a felony crime.

4.9 No Material Adverse Effect.

There shall not be any Debt or material obligations (other than those permitted pursuant to Section 7.1 hereof or as otherwise set forth in the Schedules to this Agreement) of any nature with respect to any Loan Party which could reasonably be likely to have a Material Adverse Effect.

Section 5 Representations and Warranties.

To induce Agent and Lenders to enter into this Agreement and to induce Lenders to make the Loan hereunder, Borrower represents and warrants to Agent and Lenders, as of the Closing Date, the date of the Subsequent Term Loan A made by Lenders pursuant to Section 2.2.2, and the date of the Subsequent Term Loan made by Lenders pursuant to Section 2.2.3 that:

5.1 Organization.

Each Loan Party is validly existing and in good standing under the laws of its state or country of jurisdiction as set forth on Schedule 5.1, and is duly qualified to do business in each jurisdiction set forth on Schedule 5.1, which are all of the jurisdictions in which failure to so qualify could reasonably be likely to have or result in a Material Adverse Effect.

5.2 Authorization; No Conflict.

Each Loan Party is duly authorized to execute and deliver each Loan Document to which it is a party, to borrow or guaranty monies hereunder, as applicable, and to perform its Obligations under each Loan Document to which it is a party. The execution, delivery and performance by each Loan Party of this Agreement and the other Loan Documents to which it is a party, as applicable, and the transactions contemplated therein, do not and will not (a) require any consent or approval of any Governmental Authority (other than any consent or approval which has been obtained and is in full force and effect), (b) conflict with (i) any provision of applicable law (including any Health Care Law), (ii) the charter, by-laws or other organizational documents of such Loan Party or (iii) (except as it relates to the documents governing the Prior Debt, each of which will be terminated and/or paid on the Closing Date) any Material Contract, or any judgment, order or decree, which is binding upon any Loan Party or any of its properties except in the case of the preceding clauses (i) and (iii) as would not have a Material Adverse Effect, or (c) require, or result in, the creation or imposition of any Lien on any asset of any Loan Party (other than Liens in favor of Agent created pursuant to the Collateral Documents).

5.3 Validity; Binding Nature.

Each of this Agreement and each other Loan Document to which any Loan Party is a party, as applicable, is the legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, subject to bankruptcy, insolvency and similar laws affecting the enforceability of creditors' rights generally and to general principles of equity and concepts of reasonableness.

5.4 Financial Condition.

(a) The audited consolidated financial statements of Borrower and its Subsidiaries for the Fiscal Year 2017, copies of each of which have been delivered pursuant hereto, were prepared in accordance with GAAP and present fairly in all material respects the consolidated financial condition of Borrower and its Subsidiaries as at such date and the results of its operations for the period then ended.

(b) The consolidated financial projections (including an operating budget and a cash flow budget) of Borrower and its Subsidiaries for the period ending December 31, 2020 delivered to Agent and Lenders on or prior to the Closing Date (i) were prepared by Borrower in good faith and (ii) were prepared in accordance with assumptions for which Borrower believes it has a reasonable basis, and the accompanying consolidated and consolidating pro forma unaudited balance sheet of Borrower and its subsidiaries as at the Closing Date, adjusted to give effect to the financings contemplated hereby as if such transactions had occurred on such date, is consistent in all material respects with such projections (it being understood that the projections are not a guaranty of future performance and that actual results during the period covered by the projections may materially differ from the projected results therein).

5.5 No Material Adverse Change.

Since September 30, 2017, there has been no material adverse change in the financial condition, operations, assets, business or properties of Borrower and its Subsidiaries as a whole.

5.6 Litigation.

No litigation (including derivative actions), arbitration proceeding or governmental investigation or proceeding is pending or, to Borrower's knowledge, threatened against any Loan Party that would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, other than any liability incidental to such litigation or proceedings, no Loan Party has any material Contingent Obligations not disclosed in the financial statements specified in Section 5.4(a).

5.7 Ownership of Properties; Liens.

Borrower and each other Loan Party owns, or leases, as applicable, all of its material properties and assets (including, without limitation, to all ownership rights in the FC2 Product and all rights governing the manufacture and distribution thereof), tangible and intangible, of any nature whatsoever that it purports to own, or lease, as applicable (including FC2 Intellectual Property), free and clear of all Liens and charges and claims (including to the best of Borrower's knowledge any infringement claims with respect to intellectual property), except Permitted Liens and as set forth on Schedule 5.7.

5.8 Capitalization.

All issued and outstanding Equity Interests of Loan Parties are duly authorized, validly issued, fully paid, non-assessable, and such securities were issued in compliance in all material respects with all applicable state and federal laws concerning the issuance of securities. Schedule 5.8 sets forth the authorized Equity Interests of each Loan Party as of the Closing Date as well as all Persons owning more than ten percent (10%) of the outstanding Equity Interests in each such Loan Party as of the Closing Date.

5.9 Pension Plans.

No Loan Party has, nor to Borrower's knowledge has any Loan Party ever had, a Pension Plan.

5.10 Investment Company Act.

No Loan Party is an “investment company” or a company “controlled” by an “investment company” or a “subsidiary” of an “investment company”, within the meaning of the Investment Company Act of 1940.

5.11 No Default.

No Event of Default or Default exists or would result from the incurrence by Borrower of any Debt hereunder or under any other Loan Document or as a result of any Loan Party entering into the Loan Documents to which it is a party.

5.12 Margin Stock.

No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock. As of the Closing Date, no portion of the Obligations is secured directly or indirectly by Margin Stock.

5.13 Taxes.

Each Loan Party has filed, or caused to be filed, all federal, state, foreign and other tax returns and reports required by law to have been filed by it and has paid all federal, state, foreign and other taxes and governmental charges thereby shown to be owing, except any such taxes or charges (a) that are not delinquent or (b) that are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP have been set aside on its books.

5.14 Solvency.

On the Closing Date, and immediately prior to and after giving effect to the borrowing hereunder and the use of the proceeds hereof, Borrower is, and will be, Solvent.

5.15 Environmental Matters.

The on-going operations of Loan Parties comply in all respects with all applicable Environmental Laws, except fomon-compliance which could not (if enforced in accordance with applicable law) reasonably be expected to result in a Material Adverse Effect. Each Loan Party has obtained, and maintained in good standing, all licenses, permits, authorizations and registrations required under any Environmental Law and necessary for its respective ordinary course operations, and each Loan Party is in compliance with all material terms and conditions thereof, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect. Neither Borrower nor any of its properties or operations is subject to any outstanding written order from or agreement with any federal, state, or local Governmental Authority, nor subject to any judicial or docketed administrative proceeding, respecting any Environmental Law, Environmental Claim or Hazardous Substance. To the best knowledge of Borrower, there are no Hazardous Substances or other conditions or circumstances existing with respect to any property, or arising from operations prior to the Closing Date, of any Loan Party that would reasonably be expected to result in a Material Adverse Effect. No Loan Party has underground storage tanks.



5.16 Insurance.

Loan Parties and their respective properties are insured with financially sound and reputable insurance companies which are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Parties operate, as applicable. A true and complete listing of such insurance as of the Closing Date, including issuers, coverages and deductibles, is set forth on Schedule 5.16.

5.17 Information.

All written information heretofore or contemporaneously herewith furnished in writing by Borrower to Agent or any Lender for purposes of or in connection with this Agreement and the transactions contemplated hereby, taken as a whole, is, and all written information hereafter furnished by or on behalf of Borrower to Agent or any Lender pursuant hereto or in connection herewith, taken as a whole, will be true and accurate in all material respects on the date as of which such information, taken as a whole, is dated or certified, and none of such information is or will be incomplete by omitting to state any material fact necessary to make such information not misleading in any material respect in light of the circumstances under which made (it being recognized by Agent and Lenders that any projections and forecasts provided by Borrower are based on good faith estimates and assumptions believed by Borrower to be reasonable as of the date of the applicable projections or assumptions and that actual results during the period or periods covered by any such projections and forecasts may differ from projected or forecasted results).

5.18 FC2 Intellectual Property; FC2 Product and Services.

(a) Schedule 5.18(a) (as updated from time to time in accordance with Section 6.1.2 hereof) lists all of Borrower's Registered Intellectual Property. Borrower owns and possesses or has a license or other right to use the FC2 Intellectual Property as is necessary for the conduct of the FC2 Business, without any known infringement upon the intellectual property rights of others, except as otherwise set forth on Schedule 5.18(a) hereto.

(b) Schedule 5.18(b) (as updated from time to time in accordance with Section 6.1.2 hereof) lists the FC2 Product, Services, and all Required Permits in relation thereto, and Borrower has delivered to Agent a copy of all Required Permits as of the date hereof.

(c) With respect to the FC2 Product or any related Service being tested, manufactured, marketed, sold, and/or delivered by Loan Parties, the applicable Loan Party has received (or, if applicable, authorized third parties have received), and the FC2 Product or such Service is the subject of, all Required Permits needed in connection with the testing, manufacture, marketing, sale, and/or delivery of the FC2 Product or such Service by or on behalf of Loan Parties, as the FC2 Business is currently conducted. No Loan Party has received any written notice from any applicable Governmental Authority, specifically including the FDA and/or CMS, that such Governmental Authority is conducting an investigation or review (other than a normal routine scheduled inspection) of any Loan Party's (x) manufacturing facilities or laboratory facilities relating to the FC2 Business, the processes for the FC2 Product, or any related sales or marketing activities and/or the Required Permits related to the FC2 Product, and (y) laboratory facilities, the processes for such Services, or any related sales or marketing activities and/or the Required Permits related to such Services. To the best of Borrower's knowledge there are no material deficiencies or violations of applicable laws in relation to the manufacturing, processes, sales, marketing, or delivery of the FC2 Product or such Services and/or the Required Permits related to the FC2 Product or such Services, no Required Permit has been revoked or withdrawn, nor, to

the best of Borrower's knowledge, has any such Governmental Authority issued any order or recommendation stating that the development, testing, manufacturing, sales and/or marketing of the FC2 Product or such Services by or on behalf of Loan Parties should cease or be withdrawn from the marketplace, as applicable.

(d) Except as set forth on Schedule 5.18(b), in the past three (3) years, (A) there have been no adverse clinical test results in respect of the FC2 Product since the date on which the applicable Loan Party acquired rights to the FC2 Product, and (B) there have been no product recalls or voluntary product withdrawals from any market in respect of the FC2 Product since the date on which the applicable Loan Party acquired rights to the FC2 Product.

(e) No Loan Party has experienced any significant failures in its manufacturing of the FC2 Product which caused any reduction in the FC2 Product sold.

#### 5.19 Restrictive Provisions.

No Loan Party is a party to any agreement or contract or subject to any restriction contained in its operative documents which would reasonably be expected to have a Material Adverse Effect.

#### 5.20 Labor Matters.

No Loan Party is subject to any labor or collective bargaining agreement. There are no existing or threatened strikes, lockouts or other labor disputes involving any Loan Party that singly or in the aggregate would reasonably be expected to have a Material Adverse Effect. Hours worked by and payment made to employees of each Loan Party are not in violation in any material respect of the Fair Labor Standards Act or any other applicable law, rule or regulation dealing with such matters. Each Loan Party has fully and timely made any and all social benefits and pension contributions and payments required to be made by such Loan Party according to any applicable law or agreement.

#### 5.21 Material Contracts.

Except for the agreements set forth on Schedule 5.21 (collectively, the "Material Contracts"), as of the Closing Date there are no (i) employment agreements covering the management of any Loan Party, (ii) collective bargaining agreements or other labor agreements covering any employees of any Loan Party, (iii) agreements for managerial or similar services to which any Loan Party is a party or by which it is bound, (iv) agreements between any Loan Party and any of its equity holders regarding any Loan Party, its assets or operations or any investment therein, (v) patent licenses, trademark licenses, copyright licenses or other lease or license agreements to which any Loan Party is a party, either as lessor or lessee, or as licensor or licensee (other than widely-available software subject to "shrink-wrap" or "click-through" software licenses), in each case, relating to the FC2 Product and/or FC2 Intellectual Property, (vi) distribution, marketing or supply agreements to which any Loan Party is a party relating to the FC2 Product, (vii) customer agreements to which any Loan Party is a party relating to the FC2 Product (in each case with respect to any agreement of the type described in the preceding clauses (i), (iii), (iv), (v), (vi) and (vii) requiring payments in the aggregate of more than (x) \$250,000 in any year relative to contracts relating to the FC2 Business and FC2 Product, and (y) \$2,000,000 relative to any other business or assets of the Loan Parties), (viii) partnership agreements pursuant to which any Loan Party is a partner, limited liability company agreements pursuant to which any Loan Party is a member or manager, or joint venture agreements to which any Loan Party is a party (in each case other than the applicable Loan Parties' organizational documents), (ix) real estate leases, or (x) any other agreements or instruments to which any Loan Party is a party, in each case the breach, nonperformance or cancellation

of which, would reasonably be expected to have a Material Adverse Effect. Schedule 5.21 sets forth, with respect to each real estate lease agreement to which Borrower is a party as of the Closing Date, the address of the subject property. The consummation of the transactions contemplated by the Loan Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than a Loan Party) which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

5.22 Compliance with Laws: Health Care Laws.

(a) Laws Generally. Each Loan Party is in compliance with, and is conducting and has conducted its business and operations in material compliance with the requirements of all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect.

(b) Health Care Laws. Without limiting the generality of clause (a) above:

(i) No Loan Party is in violation of any of the Health Care Laws, except for any such violation which would not reasonably be expected (either individually and taken as a whole with any other violations) to have a Material Adverse Effect.

(ii) Each Loan Party (either directly or through one or more authorized third parties) has (i) all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights from, and has made all declarations and filings with, all applicable Governmental Authorities and self-regulatory authorities (each, an "Authorization") necessary to engage in the business conducted by it, except for such Authorizations with respect to which the failure to obtain would not reasonably be expected to have a Material Adverse Effect, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Authorization, except where the limitation, suspension or revocation of such Authorization would not reasonably be expected to have a Material Adverse Effect. All such Authorizations are valid and in full force and effect and such Loan Party is in material compliance with the terms and conditions of all such Authorizations and with the rules and regulations of the regulatory authorities having jurisdiction with respect to such Authorizations, except where failure to be in such compliance or for an Authorization to be valid and in full force and effect could not reasonably be expected to have a Material Adverse Effect.

(iii) Each Loan Party has received and maintains accreditation in good standing and without limitation or impairment by all applicable accrediting organizations, to the extent required with respect to the FC2 Business by applicable law or regulation (including any foreign law or equivalent regulation), except where the failure to be so accredited and in good standing without limitation would not reasonably be expected to have a Material Adverse Effect.

(iv) Except where any of the following would not reasonably be expected to have a Material Adverse Effect, no Loan Party has been, or has been threatened to be, (i) excluded from U.S. health care programs pursuant to 42 U.S.C. §1320(a)7 or any related regulations, (ii) "suspended" or "debarred" from selling products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation, relating to debarment and suspension applicable to federal government agencies generally (48 C.F.R. Subpart 9.4), or other applicable laws or regulations, or (iii) made a party to any other action by any Governmental Authority that may prohibit it from selling products to any governmental or other purchaser pursuant to any federal, state or local laws or regulations.

(v) No Loan Party has received any written notice from the FDA, CMS, or any other Governmental Authority with respect to, nor to Borrower's best knowledge is there, any actual or threatened investigation, inquiry, or administrative or judicial action, hearing, or enforcement proceeding by the FDA, CMS, or any other Governmental Authority against any Loan Party regarding any violation of applicable law, except for such investigations, inquiries, or administrative or judicial actions, hearings, or enforcement proceedings which, individually and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.23 Existing Indebtedness; Investments, Guarantees and Certain Contracts

Borrower (a) has no outstanding Debt, except Debt under the Loan Documents and Debt permitted under Section 7.1 hereof, and (b) does not own or hold any equity or long-term debt investments in, or has any outstanding advances to or any outstanding guarantees for the obligations of, or any outstanding borrowings from, any other Person.

5.24 Affiliated Agreements.

Except as set forth on Schedule 7.7 and employment agreements entered into with employees, managers, officers and directors from time to time in the ordinary course of business, (i) there are no existing or proposed agreements, arrangements, understandings or transactions between any Loan Party, on the one hand, and such Loan Party's members, managers, managing members, investors, officers, directors, stockholders, other equity holders, employees, or Affiliates or any members of their respective families, on the other hand (other than other Loan Parties), and (ii) to Borrower's knowledge, none of the foregoing Persons are directly or indirectly, indebted to or have any direct or indirect ownership or voting interest in, any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party (except that any such Persons may own equity interests in Borrower or in (but not exceeding two percent (2%) of the outstanding equity interests of) any publicly traded company that may compete with Loan Parties).

5.25 Names; Locations of Offices, Records and Collateral; Deposit Accounts

No Loan Party has conducted business under or used any name (whether corporate, partnership or assumed) in the last five (5) years other than such names set forth on Schedule 5.25A. Each Loan Party is the sole owner(s) of all of its respective names listed on Schedule 5.25A, and any and all business done and invoices issued in such names are such Loan Party's sales, business and invoices. Each Loan Party maintains respective places of business only at the locations set forth on Schedule 5.25B, and all books and records of Loan Parties relating to or evidencing the Collateral are located in and at such locations (other than (i) Deposit Accounts, (ii) Collateral in the possession of Agent, for the benefit of Lenders, and (iii) other locations disclosed to Agent from time to time in writing). Schedule 7.14 lists all of Borrower's Deposit Accounts as of the Closing Date.

5.26 Non-Subordination.

The payment and performance of the Obligations by Loan Parties are not subordinated in any way to any other obligations of such Loan Parties or to the rights of any other Person.

5.27 Broker's or Finder's Commissions.

Except as set forth in Schedule 5.27, no broker's, finder's or placement fee or commission will be payable to any broker or agent engaged by any Loan Party or any of its officers, directors or agents with respect to the Loan or the transactions contemplated by this Agreement except for

fees payable to Agent and Lenders. Borrower agrees to indemnify Agent and each Lender and hold each harmless from and against any claim, demand or liability for broker's, finder's or placement fees or similar commissions, whether or not payable by Borrower, alleged to have been incurred in connection with such transactions, other than any broker's or finder's fees payable to Persons engaged by Agent and/or Lenders.

5.28 Anti-Terrorism; OFAC.

(a) No Loan Party nor any Person controlling or controlled by a Loan Party, nor, to Borrower's knowledge, any Person having a beneficial interest in a Loan Party, nor any Person for whom a Loan Party is acting as agent or nominee in connection with this transaction (1) is a Person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (2) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such Person in any manner violative of Section 2 of such executive order, or (3) is a Person on the list of Specially Designated Nationals and Blocked Persons or is in violation of the limitations or prohibitions under any other OFAC regulation or executive order.

(b) No part of the proceeds of the Loan will 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 United States Foreign Corrupt Practices Act of 1977, as amended.

5.29 Security Interest.

Each Loan Party has full right and power to grant to Agent, for the benefit of itself and the other Lenders, a perfected, first priority (subject to Permitted Liens) security interest and Lien on the Collateral pursuant to this Agreement and the other Loan Documents, as applicable, subject to the following sentence. Upon the execution and delivery of this Agreement and the other Loan Documents, and upon the filing of the necessary financing statements and/or appropriate filings and/or delivery of the necessary certificates evidencing any equity interest, control and/or possession, as applicable, without any further action, Agent will have a good, valid and first priority (subject to Permitted Liens) perfected Lien and security interest in the Collateral, for the benefit of Lenders. Borrower is not party to any agreement, document or instrument that conflicts with this Section 5.29.

5.30 Survival.

Borrower hereby makes the representations and warranties contained herein with the knowledge and intention that Agent and Lenders are relying and will rely thereon. All such representations and warranties will survive the execution and delivery of this Agreement, the closing and the making of the Loans.

Section 6 Affirmative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, it will:

---

## 6.1 Information.

Furnish to Agent (which shall furnish to each Lender):

### 6.1.1 Annual Report.

Promptly when available and in any event within ninety (90) days after the close of each Fiscal Year: (a) a copy of the annual audited report of Borrower and its Subsidiaries for such Fiscal Year, including therein (i) a consolidated and consolidating balance sheet and statement of earnings and cash flows of Borrower and its Subsidiaries as at the end of and for such Fiscal Year, certified without qualification (except for qualifications relating to changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent certified public accountants) by independent auditors of recognized standing selected by Borrower and reasonably acceptable to Agent, and (ii) a comparison with the previous Fiscal Year; and (b) upon Agent's reasonable request, a consolidated and consolidating balance sheet of Borrower and its Subsidiaries as of the end of such Fiscal Year and consolidated and consolidating statements of earnings and cash flows for Borrower and its Subsidiaries for such Fiscal Year, together with a comparison of actual results for such Fiscal Year with the budget for such Fiscal Year, each certified by the chief financial officer or another executive officer of Borrower.

### 6.1.2 Interim Reports.

(a) Promptly when available and in any event within forty-five (45) days after the end of each Fiscal Quarter, unaudited consolidated and consolidating balance sheets of Borrower and its Subsidiaries as of the end of such Fiscal Quarter, together with consolidated and consolidating statements of earnings and cash flows for such Fiscal Quarter and for the period beginning with the first day of such Fiscal Year and ending on the last day of such Fiscal Quarter, together with a comparison with the corresponding period of the previous Fiscal Year and a comparison with the budget for such period of the current Fiscal Year (which may be in preliminary form), certified by the chief financial officer or other executive officer of Borrower.

(b) Together with each such quarterly report to be delivered pursuant to clause (a) above, Borrower shall provide to Agent (i) a written statement of Borrower's management in setting forth a summary discussion of Borrower's financial condition, changes in financial condition and results of operations, and (ii) updated Schedules to this Agreement, as applicable, setting forth any changes to the disclosures set forth in such schedules as most recently provided to Agent or, as applicable, a written statement of Borrower's management stating that there have been no changes to such disclosures as most recently provided to Agent.

### 6.1.3 Revenue-Based Payment Reconciliation.

As soon as available but not later than five (5) Business Days prior to each Payment Date, Borrower shall furnish to Agent, a report, in form reasonably acceptable to Agent, reconciling in each geographic territory where the Borrower operates, the Net Sales, Royalties, and all other revenue arising from the FC2 Product reported by Borrower to Agent during any reporting period to the Product Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based Payment(s) made by Borrower in connection with such period(s).

#### 6.1.4 Compliance Certificate.

Contemporaneously with the furnishing of a copy of each annual audit report pursuant to Section 6.1.1 and each set of quarterly statements pursuant to Section 6.1.2, a duly completed Compliance Certificate, with appropriate insertions, dated the date of delivery and corresponding to such annual report or such quarterly statements, and signed by the chief financial officer (or other executive officer) of Borrower, containing a computation showing compliance with Section 7.13 and a statement to the effect that such officer has not become aware of any Event of Default or Default that exists or, if there is any such event, describing it and the steps, if any, being taken to cure it.

#### 6.1.5 Reports to Governmental Authorities and Shareholders

To the extent not publicly available on the SEC's EDGAR system, or any successor thereto, promptly upon the filing or sending thereof, copies of (a) all regular, periodic or special reports of each Loan Party filed with any Governmental Authority relative to the FC2 Business, (b) all registration statements (or such equivalent documents) of each Loan Party filed with any Governmental Authority and (c) all proxy statements or other communications made to the holders of Borrower's Equity Interests generally.

#### 6.1.6 Notice of Default; Litigation.

Promptly upon becoming aware of any of the following, written notice describing the same and the steps being taken by Borrower or the applicable Loan Party affected thereby with respect thereto:

(a) the occurrence of an Event of Default;

(b) any litigation, arbitration or governmental investigation or proceeding not previously disclosed by Borrower to Lenders which has been instituted or, to the knowledge of Borrower, is threatened in writing against Borrower or any other Loan Party or to which any of the properties of any thereof is subject, which in any case if adversely determined would reasonably be expected to have a Material Adverse Effect;

(c) the institution of any steps by any member of the Controlled Group or any other Person to terminate any Pension Plan, or the failure of any member of the Controlled Group to make a required contribution to any Pension Plan (if such failure is sufficient to give rise to a Lien under Section 303(k) of ERISA) or to any Multiemployer Pension Plan, or the taking of any action with respect to a Pension Plan which could result in the requirement that Borrower or any other Loan Party furnish a bond or other security to the PBGC or such Pension Plan, or the occurrence of any event with respect to any Pension Plan or Multiemployer Pension Plan which could result in the incurrence by any member of the Controlled Group of any material liability, fine or penalty (including any claim or demand for withdrawal liability or partial withdrawal from any Multiemployer Pension Plan), or any material increase in the contingent liability of Borrower or any other Loan Party with respect to any post-retirement welfare plan benefit, or any notice that any Multiemployer Pension Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of an excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the IRC, that any such plan is or may be terminated, or that any such plan is or may become insolvent;

(d) any cancellation or material adverse change in any insurance maintained by Borrower or any other Loan Party affecting the FC2 Business;

(e) any other event (including (i) any violation of any law, including any Environmental Law, or the assertion of any Environmental Claim or (ii) the enactment or effectiveness of any law, rule or regulation) which would reasonably be expected to have a Material Adverse Effect; or

(f) to the extent that it would reasonably be expected to result in a Material Adverse Effect (i) any suspension, revocation, cancellation or withdrawal of an Authorization required for the FC2 Business, is threatened or there is any basis for believing that such Authorization will not be renewable upon expiration or will be suspended, revoked, cancelled or withdrawn, (ii) Borrower or any other Loan Party enters into any consent decree or order pursuant to any Health Care Law and Regulation, or becomes a party to any judgment, decree or judicial or administrative order pursuant to any Health Care Law, (iii) receipt of any written notice or other written communication from the FDA, CMS, or any other applicable Governmental Authority alleging non-compliance with CLIA or any other applicable Health Care Law, (iv) the occurrence of any violation of any Health Care Law by Borrower or any of the other Loan Parties in the development or provision of Services, and record keeping and reporting to the FDA or CMS that could reasonably be expected to require or lead to an investigation, corrective action or enforcement, regulatory or administrative action, (v) the occurrence of any civil or criminal proceedings relating to Borrower or any of the other Loan Parties or any of their respective employees, which involve a matter within or related to the FDA's or CMS' jurisdiction, (vi) any officer, employee or agent of Borrower or any of the other Loan Parties is convicted of any crime or has engaged in any conduct for which debarment is mandated or permitted by 21 U.S.C. § 335a, or (vii) any officer, employee or agent of Borrower or any of the other Loan Parties has been convicted of any crime or engaged in any conduct for which such Person could be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

#### 6.1.7 Management Report.

Promptly upon receipt thereof, copies of all detailed financial and management reports submitted to Borrower or any other Loan Party by independent auditors in connection with each annual or interim audit made by such auditors of the books of Borrower or any other Loan Party.

#### 6.1.8 Projections.

As soon as practicable, and in any event not later than thirty (30) days after the commencement of each Fiscal Year, financial projections on a monthly basis of the marketing expenses, revenues and EBITDA for Borrower for such Fiscal Year prepared in a manner consistent with the projections delivered by Borrower to Agent prior to the Closing Date or otherwise in a manner reasonably satisfactory to Agent, accompanied by a certificate of a chief financial officer (or other executive officer) of Borrower on behalf of Borrower to the effect that (a) such projections were prepared by them in good faith, (b) Borrower believes that it has a reasonable basis for the assumptions contained in such projections and (c) such projections have been prepared in accordance with such assumptions.

#### 6.1.9 Updated Schedules to Guarantee and Collateral Agreement

Contemporaneously with the furnishing of each annual audit report pursuant to Section 6.1.1, updated versions of the Schedules to the Guarantee and Collateral Agreement showing information as of the date of such audit report (it being agreed and understood that this requirement shall be in addition to the notice and delivery requirements set forth in the Guarantee and Collateral Agreement).



6.1.10 Other Information.

Promptly, upon receipt by Borrower and from time to time as Agent reasonably requests, Borrower shall deliver or shall cause to be delivered to Agent:

- (a) copies of notice of termination or other material notice in relation to any Material Contract;
- (b) such other information concerning Borrower and any other Loan Party as Agent may reasonably request;
- (c) copies of all material communication as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other similar Governmental Authority concerning the FC2 Product; and
- (d) as requested by Agent from time to time, such information evidencing Borrower's compliance with Section 7.13.1 hereof as Agent may reasonably request.

6.2 Books; Records; Inspections.

Keep, and cause each other Loan Party to keep, its books and records in accordance with sound business practices sufficient to allow the preparation of financial statements in accordance with GAAP; permit, and cause each other Loan Party to permit (at any reasonable time and with reasonable notice), Agent or any representative thereof to, no more often than once on an annual basis prior to the occurrence of an Event of Default, inspect the properties and operations of Borrower or any other Loan Party; and permit, and cause each other Loan Party to permit, at any reasonable time and with reasonable notice (or at any time without notice if an Event of Default exists), Agent (accompanied by any Lender) or any representative thereof to visit any or all of its offices, to discuss its financial matters with its officers and its independent auditors (and Borrower hereby authorizes such independent auditors to discuss such financial matters with any Lender or Agent or any representative thereof), and to examine (and, at the expense of Borrower or the applicable Loan Party, photocopy extracts from) any of its books or other records; and permit, and cause each other Loan Party to permit, (at any reasonable time and with reasonable notice) Agent and its representatives to inspect the Collateral and other tangible assets of Borrower or Loan Party, solely as related to the FC2 Product to perform appraisals of the equipment of Borrower or Loan Party, and to inspect, audit, check and make copies of and extracts from the books, records, computer data, computer programs, journals, orders, receipts, correspondence and other data relating to any Collateral.

6.3 Conduct of Business; Maintenance of Property; Insurance.

(a) Borrower shall, and shall cause each other Loan Party to, (i) conduct its business substantially in accordance with its current business practices, (ii) engage principally in the same or similar lines of business substantially as heretofore conducted and lines of business ancillary thereto, (iii) collect the Royalties in the ordinary course of business, (iv) maintain all of its Collateral used or useful in the FC2 Business in good repair, working order and condition (normal wear and tear excepted and except as may be disposed of in the ordinary course of business and in accordance with the terms of the Loan Documents), (v) from time to time to make all necessary repairs, renewals and replacements to the Collateral; (vi) maintain and keep in full force and effect all material Permits relative to the FC2 Business and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of the FC2 Business makes such Permits or qualification necessary and in which failure to maintain such Permits or qualification could

reasonably be expected to be, have or result in a Material Adverse Effect; (vii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (viii) maintain, comply with and keep in full force and effect all FC2 Intellectual Property and Permits necessary to conduct the FC2 Business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect.

(b) [Reserved].

(c) Borrower shall maintain, and cause each other Loan Party to maintain, with responsible insurance companies, such insurance coverage as shall be required by all laws, governmental regulations and court decrees and orders applicable to it and such other insurance, to such extent and against such hazards and liabilities, as is customarily maintained by Persons operating in similar businesses and in the same geographical region as Borrower in form, substance, and amounts acceptable to Agent in its reasonable discretion; *provided* that in any event, such insurance shall, unless the Agent otherwise agrees, insure against all risks and liabilities of the type insured against as of the Closing Date and shall have insured amounts no less than, and deductibles no higher than, those amounts provided for as of the Closing Date. Upon request of Agent or any Lender (which request, absent the occurrence of an Event of Default, shall not be made more than once in any period of twelve months), Borrower shall furnish to Agent or such Lender a certificate setting forth in reasonable detail the nature and extent of all insurance maintained by Borrower and each other Loan Party. Borrower shall cause each issuer of an insurance policy to provide Agent with an endorsement (x) showing Agent as a lender's loss payee with respect to each policy of property or casualty insurance and naming Agent as an additional insured with respect to each policy of liability insurance promptly upon request by Agent, (y) providing that the insurance carrier will endeavor to give at least thirty (30) days' prior written notice to Borrower and Agent (or ten (10) days' prior written notice if the Agent consents to such shorter notice) before the termination or cancellation of the policy prior to the expiration thereof and (z) reasonably acceptable in all other respects to Agent.

(d) Unless Borrower provides Agent with evidence of the continuing insurance coverage required by this Agreement, Agent (upon reasonable advance notice to Borrower) may purchase insurance at Borrower's expense to protect Agent's and Lenders' interests in the Collateral. This insurance shall protect Borrower's and each other Loan Party's interests. The coverage that Agent purchases shall pay any claim that is made against Borrower or any other Loan Party in connection with the Collateral. Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that Borrower has obtained the insurance coverage required by this Agreement. If Agent purchases insurance for the Collateral, as set forth above, Borrower will be responsible for the reasonable costs of that insurance, including interest and any other charges that may be imposed with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance, and such costs of the insurance may be added to the principal amount of the Loans owing hereunder.

#### 6.4 Compliance with Laws: Payment of Taxes and Liabilities.

(a) Comply, and cause each other Loan Party to comply, in all material respects with all applicable laws, rules, regulations, decrees, orders, judgments, licenses and permits, except where failure to comply would not reasonably be expected to have a Material Adverse Effect; (b) without limiting clause (a) above, ensure, and cause each other Loan Party to ensure, that no person who Controls a Loan Party is (i) listed on the Specially Designated Nationals and Blocked Person List maintained by OFAC, and/or any other similar lists maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person designated under Section 1(b), (c) or (d) or Executive Order No.

13224 (September 23, 2001), any related enabling legislation or any other similar Executive Orders; (c) without limiting clause (a) above, comply and cause each other Loan Party to comply, with all applicable Bank Secrecy Act and anti-money laundering laws and regulations, (d) file, or cause to be filed, all federal, state, foreign and other tax returns and reports required by law to be filed by any Loan Party, and (e) pay, and cause each other Loan Party to pay, prior to delinquency, all foreign, federal, state and other taxes and other material governmental charges against it or any of its property, as well as material claims of any kind which, if unpaid, could become a Lien (other than a Permitted Lien) on any of its property; *provided* that the foregoing shall not require Borrower or any other Loan Party to pay any such tax, charge or claim so long as it shall contest the validity thereof in good faith by appropriate proceedings and shall set aside on its books adequate reserves with respect thereto in accordance with GAAP. For purposes of this Section 6.4, "Control" shall mean, when used with respect to any Person, (x) the direct or indirect beneficial ownership of fifty-one percent (51%) or more of the outstanding Equity Interests of such Person or (y) the power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

#### 6.5 Maintenance of Existence.

Maintain and preserve, and (subject to Section 7.4) cause each other Loan Party to maintain and preserve, (a) its existence and good standing in the jurisdiction of its organization and (b) its qualification to do business and good standing in each jurisdiction where the nature of its business makes such qualification necessary, other than any such jurisdiction where the failure to be qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

#### 6.6 Employee Benefit Plans.

Except to the extent that failure to do so would not be reasonably expected to result in (a) a Material Adverse Effect or (b) liability in excess of \$250,000 of any Loan Party, maintain, and cause each other Loan Party to maintain, each Pension Plan (if any) in substantial compliance with all applicable requirements of law and regulations.

#### 6.7 Environmental Matters.

Except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, if any release or disposal of Hazardous Substances shall occur or shall have occurred on any real property or any other assets of Borrower or any other Loan Party, cause, or direct the applicable Loan Party to cause, the prompt containment and removal of such Hazardous Substances and the remediation of such real property or other assets as is necessary to comply in all material respects with all Environmental Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, except to the extent the failure to do so would not be reasonably expected to result in a Material Adverse Effect, Borrower shall, and shall cause each other Loan Party to, comply with each valid Federal or state judicial or administrative order requiring the performance at any real property by Borrower or any other Loan Party of activities in response to the release or threatened release of a Hazardous Substance.

#### 6.8 Further Assurances.

Take, and cause each other Loan Party to take, such actions as are necessary or as Agent or the Required Lenders may reasonably request from time to time to ensure that the Obligations of Borrower and each other Loan Party under the Loan Documents are secured by a perfected Lien in favor of Agent (subject only to the Permitted Liens) on substantially all of the assets of Borrower related to the FC2 Product and guaranteed by all the Loan Parties, as applicable, in each case including (a) the

execution and delivery of guaranties, security agreements, pledge agreements, mortgages, deeds of trust, financing statements and other documents, and the filing or recording of any of the foregoing; (b) the delivery of certificated securities (if any) and other Collateral with respect to which perfection is obtained by possession but excluding (i) the requirement for the Loan Parties to execute and deliver leasehold mortgages, and (ii) any other Excluded Collateral as defined in the Guarantee and Collateral Agreement; and (c) using commercially reasonable efforts to obtain and deliver executed Collateral Access Agreements in relation to any foreign and domestic location where a material portion of the Collateral is held or otherwise stored from time to time.

6.9 Compliance with Health Care Laws.

(a) Without limiting or qualifying Section 6.4 or any other provision of this Agreement, Borrower will comply, and will cause each other Loan Party to comply, in all material respects with all applicable Health Care Laws relating to the operation of such Person's business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) Borrower will, and will cause each other Loan Party to:

(i) Keep in full force and effect all Authorizations required to operate such Person's FC2 Business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that could reasonably be expected to have a Material Adverse Effect, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Loan Parties or any of their Subsidiaries, and issued by any Governmental Authority relating to such Person's FC2 Business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by Loan Parties or any of their Subsidiaries and issued by any Governmental Authority relating to such Person's FC2 Business, (y) copies of all material warnings and material untitled letters as well as other material documents received by Loan Parties or any of their Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the FC2 Business of the Loan Parties or any of their Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority relating to such Person's FC2 Business.

(iii) Promptly furnish or cause to be furnished to the Agent, with respect to matters that would reasonably be expected to have a Material Adverse Effect, (in such form as may be reasonably required by Agent) copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of any Loan Party or Subsidiary; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to the Agent notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against any Loan Party or any of its Subsidiaries.

(v) Promptly furnish or cause to be furnished to the Agent notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of any Loan Party or any of its Subsidiaries in relation to the provision of clinical research or related services.

Notwithstanding anything to the contrary in any Loan Document, no Loan Party or any of its Subsidiaries shall be required to furnish to Agent or any Lender patient-related or other information, the disclosure of which to Agent or such Lender is prohibited by any applicable law.

#### 6.10 Cure of Violations.

If there shall occur any breach of Section 6.9, Borrower shall take such commercially reasonable action as is necessary to validly challenge or otherwise appropriately respond to such fact, event or circumstance within any timeframe required by applicable Health Care Laws, and shall thereafter diligently pursue the same.

#### 6.11 Corporate Compliance Program.

Maintain, and will cause each other Loan Party to maintain on its behalf, a corporate compliance program reasonably acceptable to Agent. Until the Obligations have been Paid in Full, Borrower will modify such corporate compliance program from time to time (and cause the other Loan Parties and their Subsidiaries to modify their respective corporate compliance programs) as may be reasonable to attempt to ensure continuing compliance in all material respects with all material applicable laws, ordinances, rules, regulations and requirements (including, in all applicable material respects, any material Health Care Laws). Borrower will permit Agent and/or any of its outside consultants to review such corporate compliance programs from time to time upon reasonable notice and during normal business hours of Borrower.

#### 6.12 Payment of Debt.

Except as otherwise prescribed in the Loan Documents, Borrower shall pay, discharge or otherwise satisfy when due and payable (subject to applicable grace periods and, in the case of trade payables, to ordinary course of payment practices) all of its material obligations and liabilities, except when the amount or validity thereof is being contested in good faith by appropriate proceedings and appropriate reserves shall have been made in accordance with GAAP consistently applied.

### Section 7 Negative Covenants.

Until all Obligations have been Paid in Full, Borrower agrees that, unless at any time Agent shall otherwise expressly consent in writing, in its sole discretion, it will:

#### 7.1 Debt.

Not create, incur, assume or suffer to exist any Debt, except:

- (a) Obligations under this Agreement and the other Loan Documents;

- (b) Debt of the Borrower existing on the Closing Date and described on Schedule 7.1;
- (c) Debt secured by Liens on assets not constituting Collateral, subject to an intercreditor agreement, in form and substance acceptable to Agent;
- (d) Debt secured by Liens permitted by Section 7.2(b), Section 7.2(d), or Section 7.2(e) and extensions, renewals and re-financings thereof; *provided* that the aggregate amount of all such Debt permitted under Section 7.2(d) at any time outstanding shall not exceed \$100,000;
- (e) Debt with respect to any Hedging Obligations incurred for bona fide hedging purposes and not for speculation;
- (f) Debt (i) arising from customary agreements for indemnification related to sales of goods, licensing of intellectual property or adjustment of purchase price or similar obligations in any case incurred in connection with the acquisition or disposition of any business or assets otherwise permitted hereunder, (ii) representing deferred compensation to employees of Borrower incurred in the ordinary course of business, or (iii) representing customer deposits and advance payments received in the ordinary course of business from customers for goods purchased in the ordinary course of business;
- (g) Debt with respect to cash management obligations and other Debt in respect of automatic clearing house arrangements, netting services, overdraft protection and similar arrangements, in each case incurred in the ordinary course of business;
- (h) Debt incurred in connection with surety bonds, performance bonds or letters of credit for worker's compensation, unemployment compensation and other types of social security and otherwise in the ordinary course of business or referred to in Section 7.2(e);
- (i) [Reserved]; and
- (j) unsecured Debt (which for further clarity shall exclude accounts payable and other current liabilities incurred by Borrower in the ordinary course of business), in addition to the Debt listed above, in an aggregate outstanding amount not at any time exceeding \$100,000.

#### 7.2 Liens.

Not create or permit to exist any Lien on any of its real or personal properties, assets or rights of whatsoever nature (whether now owned or hereafter acquired), except:

- (a) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being diligently contested in good faith by appropriate proceedings and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement has occurred;
- (b) Liens arising in the ordinary course of business (including without limitation (i) Liens of carriers, warehousemen, mechanics, landlords and materialmen and other similar Liens imposed by law and (ii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods, (iii) Liens securing liability for reimbursement or indemnification obligations of the Borrower to insurance carriers providing insurance to the Borrower or any Subsidiary arising by virtue of deposits and (iv) Liens incurred in connection with worker's compensation, unemployment compensation and other types of social security

(excluding Liens arising under ERISA that secure an amount in excess of \$250,000) or in connection with surety bonds, bids, tenders, performance bonds, trade contracts not for borrowed money, licenses, statutory obligations and similar obligations) for sums not overdue or being diligently contested in good faith by appropriate proceedings and not involving any deposits or advances or borrowed money or the deferred purchase price of property or services and, in each case, for which it maintains adequate reserves in accordance with GAAP and with respect to which no execution or other enforcement of which is effectively stayed;

(c) Liens existing on the date hereof and listed on Schedule 7.2;

(d) (i) Liens arising in connection with Capital Leases (and attaching only to the property being leased), (ii) Liens on any property securing debt incurred for the purpose of financing all or any part of the cost of acquiring or improving such property; *provided* that any such Lien attaches to such property within ninety (90) days of the acquisition or improvement thereof and attaches solely to the property so acquired or improved, and (iii) the replacement, extension or renewal of a Lien permitted by one of the foregoing clauses (i) or (ii) in the same property subject thereto arising out of the extension, renewal or replacement of the Debt secured thereby (without increase in the amount thereof);

(e) Liens relating to litigation bonds and attachments, appeal bonds, judgments and other similar Liens arising in connection with any judgment or award that is not an Event of Default hereunder;

(f) easements, rights of way, restrictions, minor defects or irregularities in title and other similar Liens not interfering in any material respect with the ordinary conduct of the business of Borrower;

(g) Liens arising under the Loan Documents;

(h) any interest or title of a licensor, sublicensor, lessor or sublessor under any license, lease, sublicense or sublease agreement entered into in the normal course of business, only to the extent limited to the item licensed or leased;

(i) (i) Liens of a collection bank arising under Section 4-210 of the Uniform Commercial Code on items in the course of collection and (ii) customary set off rights of deposit banks with respect to deposit accounts maintained at such deposit banks or which are contained in standard agreements for the opening of an account with a bank;

(j) Liens arising from precautionary filings of financing statements under the Uniform Commercial Code or similar legislation of any applicable jurisdiction in respect of operating leases permitted hereunder and entered into by Borrower in the ordinary course of business;

(k) Liens attaching to cash earnest money deposits in connection with any letter of intent or purchase agreement permitted hereunder or indemnification other post-closing escrows or holdbacks;

(l) Liens incurred with respect to Hedging Obligations incurred for bona fide hedging purposes and not for speculation; and

(m) Liens on assets not constituting Collateral subject to an intercreditor agreement, in form and substance acceptable to Agent.

### 7.3 Dividends; Redemption of Equity Interests.

Not (a) declare, pay or make any dividend or distribution on any Equity Interests or other securities or ownership interests, (b) apply any of its funds, property or assets to the acquisition, redemption or other retirement of any Equity Interests or other securities or interests or of any options to purchase or acquire any of the foregoing, (c) otherwise make any payments, dividends or distributions to any member, manager, managing member, stockholder, director or other equity owner in such Person's capacity as such other than in compliance with Section 7.7 hereof, or (d) make any payment of any management, service or related or similar fee to any Affiliate or holder of Equity Interests of Borrower other than in compliance with Section 7.7 hereof.

### 7.4 Mergers; Consolidations; Asset Sales.

(a) Not sell, transfer, dispose of, convey, lease or license any of its real or personal property assets relating to the FC2 Product or Equity Interests of any of its Subsidiaries, except for (i) sales of FC2 Product inventory in the ordinary course of business, (ii) transfers, destruction or other disposition of obsolete or worn-out assets in the ordinary course of business and (iii) any other sales and dispositions of assets (excluding sales of inventory described in clause (i) above) for at least fair market value (as determined by the Board of Directors of Borrower) so long as the net book value of all assets sold or otherwise disposed of in any Fiscal Year does not exceed \$250,000 with respect to sales and dispositions made pursuant to this clause (iii), (iv) [reserved], (v) leases, licenses, subleases and sublicenses entered into in the ordinary course of business, (vi) sales and exchanges of Cash Equivalent Investments to the extent otherwise permitted hereunder, (vii) Liens expressly permitted under Section 7.2 and transactions expressly permitted by clause (a) or Section 7.10, (viii) sales or issuances of Equity Interests by Borrower, (ix) [reserved], (x) dispositions in the ordinary course of business consisting of the abandonment of intellectual property rights which, in the reasonable good faith determination of Borrower, are not material to the conduct of the business of Borrower, (xi) [reserved], (xii) a disposition which constitutes an insured event or pursuant to a condemnation, "eminent domain" or similar proceeding, and (xiii) exchanges of existing equipment for new equipment that is substantially similar to the equipment being exchanged and that has a value equal to or greater than the equipment being exchanged. For the avoidance of doubt, the foregoing provisions of this Section 7.4(a) shall not restrict or limit any sale, transfer or other disposition of any assets of the Borrower and its Subsidiaries which are not related to the FC2 Business.

(b) Notwithstanding any provision in this Agreement or any other Loan Documents to the contrary, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of FC2 Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties executed (i) in the ordinary course of Borrower's business, (ii) on an arms-length basis and (iii) so long as no Event of Default has occurred and is continuing.

### 7.5 Modification of Organizational Documents.

Not permit the charter, by-laws or other organizational documents of Borrower or any other Loan Party to be amended or modified in any way which could reasonably be expected to materially and adversely affect the interests of Agent or any Lender. An amendment to Borrower's certificate of incorporation to increase Borrower's authorized capital stock shall not be deemed to adversely affect the interests of Agent or any Lender.



7.6 Use of Proceeds.

Use the proceeds of the Loans solely for working capital, for fees and expenses related to the negotiation, execution, delivery and closing of this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby and for other general business purposes of Borrower and its Affiliates, and not use any proceeds of any Loan or permit any proceeds of any Loan to be used, either directly or indirectly, for the purpose, whether immediate, incidental or ultimate, of “purchasing or carrying” any Margin Stock.

7.7 Transactions with Affiliates.

Not, and not permit any other Loan Party to, enter into, or cause, suffer or permit to exist any transaction, arrangement or contract with any of its other Affiliates, which is on terms which are less favorable than are obtainable from any Person which is not one of its Affiliates, other than (i) reasonable compensation and indemnities to, benefits for, reimbursement of expenses of, and employment arrangements with, officers, employees and directors in the ordinary course of business, (ii) transactions among Loan Parties and (iii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 7.7.

7.8 Inconsistent Agreements.

Not, and not permit any other Loan Party to, enter into any agreement containing any provision which would (a) be violated or breached by any borrowing by Borrower hereunder or by the performance by Borrower or any other Loan Party of any of its Obligations hereunder or under any other Loan Document, (b) prohibit Borrower or any other Loan Party from granting to Agent and Lenders a Lien on any of the Collateral or (c) create or permit to exist or become effective any encumbrance or restriction on the ability of any other Loan Party to (i) pay dividends or make other distributions to, or pay any Debt owed to Borrower, (ii) make loans or advances to Borrower or (iii) transfer any of its assets or properties to Borrower or any other Loan Party, other than, in the cases of clauses (b) and (c), (A) restrictions or conditions imposed by any agreement relating to purchase money Debt, Capital Leases and other secured Debt or to leases and licenses permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Debt or the property leased or licensed, (B) customary provisions in leases and other contracts restricting the assignment thereof, (C) restrictions and conditions imposed by law, and (D) those arising under any Loan Document.

7.9 Business Activities.

Not engage in any line of business other than the businesses engaged in on the Closing Date and businesses reasonably related thereto. Not issue any Equity Interest other than (a) Equity Interests of Borrower that do not require any cash dividends or other cash distributions to be made prior to the Obligations being Paid in Full, or (b) any issuance of directors' qualifying shares as required by applicable law.

7.10 Investments.

Not make or permit to exist any Investment in any other Person, except the following:

- (a) Cash and Cash Equivalent Investments;
- (b) bank deposits in the ordinary course of business;

(c) Investments (including Acquisitions) which do not relate to the FC2 Business;

(d) [Reserved];

(e) Hedging Obligations permitted under Section 7.1(d);

(f) lease, utility and other similar deposits made in the ordinary course of business and trade credit extended in the ordinary course of business;

(g) Investments consisting of the non-cash portion of the consideration received in respect of Dispositions permitted hereunder;

(h) Investments permitted by Borrower as a result of the receipt of insurance and/or condemnation proceeds in accordance with the Loan Documents; and

(i) Investments (i) received as a result of the bankruptcy or reorganization of any Person or taken in settlement of or other resolution of claims or disputes or (ii) in securities of customers and suppliers received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and bona fide disputes with, customers and suppliers, and, in each case, extensions, modifications and renewals thereof.

7.11 Restriction of Amendments to Certain Documents

Without the Agent's prior written consent, not, nor permit any Loan Party to, assign any of its rights or obligations under any Material Contracts relating to the FC2 Business (or any replacements thereof) set forth on Schedule 7.11 hereto (as such schedule may be updated by Agent and Borrower, with Agent's Consent) from time to time to include any material contracts, licenses, agreements or similar arrangements to those described on such Schedule as of the Closing Date that are entered into by a Loan Party from time to time after the Closing Date).

7.12 Fiscal Year.

Not change its Fiscal Year.

7.13 Financial Covenants

7.13.1 Minimum Marketing Expenses.

Not permit the amount of expenses with respect to the marketing and distributing of the FC2 Product as reported for the three (3) month period ending on the last Business Day of any Fiscal Quarter to be less than \$125,000. For the avoidance of doubt, as used herein marketing expenses are intended to broadly include all expenses that relate to the selling of FC2 Product, including promotional advertising campaigns, marketing collateral materials, trade shows, lobbying efforts, etc.

7.13.2 Consolidated Unencumbered Liquid Assets.

Not permit the Consolidated Unencumbered Liquid Assets as of any date of determination to be less than \$1,000,000.

#### 7.13.3 Upstream Payments.

Not permit any of its Subsidiaries to pay Borrower less than fifty percent (50%) of the Subsidiary Net Cash Proceeds received by such Subsidiary during any Fiscal Quarter on or prior to the last Business Day of any such Fiscal Quarter.

#### 7.13.4 Malaysian Profit Margin.

Borrower shall not, nor shall it permit any Subsidiary to, allow any Subsidiary involved in the manufacturing of the FC2 Product (including, without limitation The Female Health Company Malaysia SDN, NHD (Malaysia)) to realize a profit margin in relation to the FC2 Product in excess of fifteen percent (15%).

#### 7.14 Deposit Accounts.

Not to maintain or establish any new Deposit Accounts other than (a) Exempt Accounts and (b) the Deposit Accounts set forth on Schedule 7.14 (which Deposit Accounts constitute all of the Deposit Accounts, securities accounts or other similar accounts maintained by Borrower as of the Closing Date) without prior written notice to Agent. To the extent such Deposit Account is not an Exempt Account, Borrower and the bank or other financial institution at which the account is to be opened after the Closing Date shall promptly enter into an Account Control Agreement, in form and substance reasonably satisfactory to Agent, as requested by Agent.

#### 7.15 Subsidiaries.

Not, without the prior written consent of Agent in its sole discretion, establish or acquire any Subsidiary, except Subsidiaries which do not and will not own any assets associated with or conduct any FC2 Business.

#### 7.16 Regulatory Matters.

To the extent that any of the following would reasonably be expected to result in a Material Adverse Effect, not, and not permit any other Loan Party to, (i) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of CLIA or that could otherwise reasonably be expected to provide the basis for CMS or any Governmental Authority to undertake action against such Loan Party, (ii) conduct any clinical studies in the United States or sponsor the conduct of any clinical research in the United States, (iii) introduce into commercial distribution any FDA Products which are, upon their shipment, adulterated or misbranded in violation of 21 U.S.C. § 331, (iv) make, and use commercially reasonable efforts to not permit any officer, employee or agent of any Loan Party to make, any untrue statement of material fact or fraudulent statement to the FDA or any other Governmental Authority; fail to disclose a material fact required to be disclosed to the FDA or any other Governmental Authority; or commit a material act, make a material statement, or fail to make a statement in breach of the FD&C Act or that could otherwise reasonably be expected to provide the basis for the FDA or any other Governmental Authority to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," as set forth in 56 Fed. Reg. 46191 (September 10, 1991), or (v) otherwise incur any material liability (whether actual or contingent) for failure to comply with Health Care Laws.

7.17 Name; Permits; Dissolution; Insurance Policies; Disposition of Collateral; Taxes; Trade Names.

Borrower shall not, nor shall it permit any Loan Party to, (a) change its jurisdiction of organization or change its corporate name without thirty (30) calendar days prior written notice to Agent, (b) amend, alter, suspend, terminate or make provisional in any material way, any Permit relative to the FC2 Business or FC2 Product, the suspension, amendment, alteration or termination of which could reasonably be expected to be, have or result in a Material Adverse Effect without the prior written consent of Agent, which consent shall not be unreasonably withheld, (c) wind up, liquidate or dissolve (voluntarily or involuntarily) or commence or suffer any proceedings seeking or that would result in any of the foregoing, (d) amend, modify, restate or change any insurance policy in a manner adverse to Agent or Lenders, (e) [reserved], (f) change its federal tax employer identification number or similar tax identification number under the relevant jurisdiction or establish new or additional trade names without providing not less than thirty (30) days advance written notice to Agent, or (g) revoke, alter or amend any Tax Information Authorization (on IRS Form 8821 or otherwise) or other similar authorization mandated by the relevant Government Authority given to any Lender.

7.18 Secured Debt at Subsidiaries.

Except for Permitted Liens, Borrower shall not permit any of its Subsidiaries to grant any Lien on such Subsidiaries' assets in relation to the FC2 Product or otherwise incur any secured indebtedness that is not subject to an intercreditor agreement, in form and substance acceptable to Agent.

Section 8 Events of Default; Remedies.

8.1 Events of Default.

Each of the following shall constitute an Event of Default under this Agreement:

8.1.1 Non-Payment of Credit.

(a) Default in the payment when due of all outstanding Obligations (including the Return Premium and Prepayment Fee) on the Termination Date; (b) default in the payment of any Revenue-Based Payment on or before the applicable Payment Date, and continuance thereof for five (5) Business Days; or (c) without duplication of clause (b) hereof, default, and continuance thereof for ten (10) Business Days, in the payment when due of any other fee, or other amount payable by any Loan Party hereunder or under any other Loan Document.

8.1.2 Default Under Other Debt.

Any Loan Party shall fail to pay when due any payment under any Debt (excluding the Obligations) in an aggregate principal amount (for all such Debt so affected and including undrawn committed or available amounts and amounts owing to all creditors under any combined or syndicated credit arrangement) exceeding \$250,000 or any other default shall occur with respect to any such Debt the effect of which default is to cause the holders thereof to demand payment of such Debt prior to its stated maturity.

8.1.3 Bankruptcy; Insolvency.

(a) Any Loan Party shall (i) be unable to pay its debts generally as they become due, (ii) file a petition under any insolvency statute, (iii) make a general assignment for the benefit of its creditors, (iv) commence a proceeding for the appointment of a receiver, trustee, liquidator or conservator of itself or of the whole or any substantial part of its property or shall otherwise be dissolved or liquidated, or (v) make an application or commence a proceeding seeking reorganization or liquidation or similar relief under any Debtor Relief Law or any other applicable law; or

(b) (i) a court of competent jurisdiction shall (A) enter an order, judgment or decree appointing a custodian, receiver, trustee, liquidator or conservator of any Loan Party or the whole or any substantial part of any of Loan Party's properties, which shall continue unstayed and in effect for a period of sixty (60) calendar days, (B) approve a petition or claim filed against any Loan Party seeking reorganization, liquidation, appointment of a receiver, interim receiver, liquidator, conservator, trustee or special manager or similar relief under the any Debtor Relief Law or any other applicable law, which is not dismissed within sixty (60) calendar days or, (C) under the provisions of any Debtor Relief Law or other applicable law or statute, assume custody or control of any Loan Party or of the whole or any substantial part of any of Loan Party's properties, which is not irrevocably relinquished within sixty (60) calendar days, or (ii) there is commenced against any Loan Party any proceeding or petition seeking reorganization, liquidation or similar relief under any Debtor Relief Law or any other applicable law or statute, which (A) is not unconditionally dismissed within sixty (60) calendar days after the date of commencement, or (B) is with respect to which Borrower takes any action to indicate its approval of or consent.

8.1.4 Non-Compliance with Loan Documents.

(a) Any failure by Borrower to comply with or to perform any covenant set forth in Section 7; or (b) failure by any Loan Party to comply with or to perform any other provision of this Agreement or any other Loan Document applicable to it (and not constituting an Event of Default under any other provision of this Section 8) and continuance of such failure described in this clause (b) for thirty (30) days after the earlier of any Loan Party becoming aware of such failure or notice thereof to Borrower from Agent or any Lender.

8.1.5 Representations; Warranties.

Any representation or warranty made by any Loan Party herein or any other Loan Document is false or misleading in any material respect when made, or any schedule, certificate, financial statement, report, notice or other writing furnished by any Loan Party to Agent or any Lender in connection herewith, taken as a whole with all other information provided by Loan Parties to Agent is false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified.

8.1.6 Pension Plans.

(a) Institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Loan Party or any member of the Controlled Group could be required to make a contribution to such Pension Plan, or could incur a liability or obligation to such Pension Plan, in excess of \$250,000; (b) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA securing obligations in excess of \$250,000; or (c) there shall occur any withdrawal or partial withdrawal from a Multiemployer Pension Plan and the withdrawal liability (without un-accrued interest) to Multiemployer Pension Plans as a result of such withdrawal (including any outstanding withdrawal liability that Borrower or any other Loan Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds \$250,000.

8.1.7 Judgments.

Final judgments which exceed an aggregate of \$250,000 (to the extent not adequately covered by insurance as to which the insurance company has not disclaimed liability (provided that customary "reservation of rights" letters shall not be deemed to be disclaimers of liability)) shall be rendered against any Loan Party and shall not have been paid, discharged or vacated or had execution thereof stayed pending appeal within thirty (30) calendar days after entry or filing of such judgments.

8.1.8 Invalidity of Loan Documents or Liens.

(a) Any Loan Document shall cease to be in full force and effect otherwise in accordance with its express terms that results in a material diminution of the rights and remedies afforded to Agent and/or Lenders or any other secured parties thereunder; (b) any Loan Party (or any Person by, through or on behalf of any Loan Party) shall contest in any manner the validity, binding nature or enforceability of any Loan Document; or (c) any Lien created pursuant to any Loan Document ceases to constitute a valid first priority perfected Lien (subject to Permitted Liens) on any material portion of the Collateral in accordance with the terms thereof, or Agent ceases to have a valid perfected first priority security interest (subject to Permitted Liens) in any material portion of the Collateral pledged to Agent, for the benefit of Lenders, pursuant to the Collateral Documents.

8.1.9 [Reserved].

8.1.10 Change of Control.

A Change of Control shall occur that does not result in the payment in full of all Obligations hereunder in accordance with Section 2.8.2.

8.1.11 Certificate Withdrawals, Adverse Test or Audit Results, and Other Matters

(a) The institution of any proceeding by FDA, CMS, or any other Governmental Authority to order the withdrawal of the FC2 Product or any Service or Service category from the market or to enjoin Borrower or any of its Affiliates from manufacturing, marketing, selling, distributing, or otherwise providing the FC2 Product or any Service or Service that could reasonably be expected to have a Material Adverse Effect, (b) the institution of any action or proceeding by DEA, FDA, CMS, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Required Permit held by Borrower or any of its Affiliates or any of their representatives, which, in each case, could reasonably be expected to have a Material Adverse Effect, (c) the commencement of any enforcement action against Borrower or any of its Affiliates by DEA, FDA, CMS, or any other Governmental Authority that could reasonably be expected to have a Material Adverse Effect, (d) the recall of the FC2 Product or any Service from the market, the voluntary withdrawal of the FC2 Product or any Service from the market, or actions to discontinue the sale of the FC2 Product or any Service that could reasonably be expected to have a Material Adverse Effect, (e) the occurrence of adverse test, audit, or inspection results in connection with the FC2 Product or any Service which could reasonably be expected to have a Material Adverse Effect, or (f) the occurrence of any event described in clauses (a) through (e) above that would otherwise cause Borrower to be excluded from participating in any federal, provincial, state or local health care programs under Section 1128 of the Social Security Act or any similar law or regulation.

8.1.12 Material Adverse Effect.

Any Material Adverse Effect shall occur that is not otherwise provided for in this Section 8.1.

## 8.2 Remedies.

(a) If any Event of Default described in Section 8.1.3 shall occur, the Loan and all other Obligations shall become immediately due and payable without presentment, demand, protest or notice of any kind; and, if any other Event of Default shall occur and be continuing, Agent may, and upon the written request of Required Lenders shall, declare all or any part of the Loans and other Obligations to be due and payable, whereupon the Loans and other Obligations (including without limitation the Return Premium) shall become immediately due and payable (in whole or in part, as applicable), all without presentment, demand, protest or notice of any kind. Agent shall use commercially reasonable efforts to promptly advise Borrower of any such declaration, but failure to do so shall not impair the effect of such declaration.

(b) In addition to the acceleration provisions set forth in Section 8.2(a) above, upon the occurrence and continuation of an Event of Default, Agent may (or shall at the request of Required Lenders) exercise any and all rights, options and remedies provided for in any Loan Document, under the Uniform Commercial Code, any other applicable foreign or domestic laws or otherwise at law or in equity, including, without limitation, the right to (i) apply any property of Borrower held by Agent to reduce the Obligations, (ii) foreclose the Liens created under the Loan Documents, (iii) realize upon, take possession of and/or sell any Collateral or securities pledged, with or without judicial process, (iv) exercise all rights and powers with respect to the Collateral as Borrower might exercise, (v) collect and send notices regarding the Collateral, with or without judicial process, (vi) by its own means or with judicial assistance, enter any premises at which Collateral and/or pledged securities are located, or render any of the foregoing unusable or dispose of the Collateral and/or pledged securities on such premises without any liability for rent, storage, utilities, or other sums, and Borrower shall not resist or interfere with such action, (vii) at Borrower's expense, require that all or any part of the Collateral be assembled and made available to Agent, for the benefit of Lenders, or Required Lenders at any place reasonably designated by Required Lenders in their sole discretion and/or relinquish or abandon any Collateral or securities pledged or any Lien thereon.

(c) The enumeration of any rights and remedies in any Loan Document is not intended to be exhaustive, and all rights and remedies of Agent and Lenders described in any Loan Document are cumulative and are not alternative to or exclusive of any other rights or remedies which Agent and Lenders otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

(d) Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Loan Parties fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice (except as expressly required hereunder), to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(c) and/or Section 2.10, as applicable, and any Protective Advances shall bear interest at a rate of ten percent (10%) per annum from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

Section 9 Agent.

9.1 Appointment; Authorization.

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 Loan 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 Loan Document, together with such powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document, Agent shall not have any duty or responsibility except those expressly set forth herein, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent.

9.2 Delegation of Duties.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel 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 with reasonable care.

9.3 Limited Liability.

None of Agent or any of its Affiliates, directors, officers, employees or agents 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 Loan Document or the transactions contemplated hereby (except to the extent resulting from its own gross negligence or willful misconduct as determined by a court of competent jurisdiction), or (b) be responsible in any manner to any Lender for any recital, statement, representation or warranty made by any Loan Party or Affiliate of any Loan Party, or any officer thereof, contained in this Agreement or in any other Loan 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 Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document (or the creation, perfection or priority of any Lien or security interest therein), or for any failure of any Loan Party or any other party to any Loan Document to perform its Obligations hereunder or thereunder. Agent shall not be under any obligation to any Lender 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 Loan Document, or to inspect the properties, books or records of any Loan Party or Affiliate of any Loan Party.

9.4 Reliance.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document 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 any Loan Party), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of Required Lenders (or all Lenders if expressly required hereunder) as it deems appropriate and, if it so requests, confirmation from Lenders of their obligation to indemnify Agent 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 Loan Document in accordance with a request or consent of Required Lenders (or all Lenders if expressly required hereunder) and such request and any action taken or failure to act pursuant thereto shall be binding upon each Lender.

#### 9.5 Notice of Default.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Default except with respect to defaults in the payment of principal and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Event of Default or Default and stating that such notice is a "notice of default". Agent will notify Lenders of its receipt of any such notice or any such default in the payment of principal and fees required to be paid to Agent for the account of Lenders. Agent shall take such action with respect to such Event of Default or Default as may be requested by Required Lenders in accordance with Section 8.2; *provided* that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Default as it shall deem advisable or in the best interest of Lenders.

#### 9.6 Credit Decision.

Each Lender acknowledges that Agent has not made any representation or warranty to it, and that no act by Agent hereafter taken, including any review of the affairs of Borrower and the other Loan Parties, shall be deemed to constitute any representation or warranty by Agent to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon Agent 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 Borrower, 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 Agent 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 Loan 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 the Loan Parties. Except for notices, reports and other documents expressly herein required to be furnished to Lenders by Agent, 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 or other condition or creditworthiness of any Loan Party which may come into the possession of Agent.

#### 9.7 Indemnification.

Whether or not the transactions contemplated hereby are consummated, each Lender shall indemnify upon demand Agent and its Affiliates, directors, officers, employees and agents (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so), based on such Lender's Pro Rata Term Loan Share, from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs, except to the extent any thereof result from the applicable Person's own gross negligence or willful misconduct, as determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Legal Costs) incurred by Agent 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 Loan 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 9.7 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or modification, release or discharge of, any or all of the Collateral Documents, termination of this Agreement and the resignation or replacement of Agent.

9.8 Agent Individually.

SWK and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with any Loan Party and any Affiliate of any Loan Party as though SWK were not Agent hereunder and without notice to or consent of any Lender. Each Lender acknowledges that, pursuant to such activities, SWK or its Affiliates may receive information regarding Loan Parties or their Affiliates (including information that may be subject to confidentiality obligations in favor of any such Loan Party or such Affiliate) and acknowledge that Agent shall be under no obligation to provide such information to them. With respect to their Loans (if any), SWK and its Affiliates shall have the same rights and powers under this Agreement as any other Lender and may exercise the same as though SWK were not Agent, and the terms "Lender" and "Lenders" include SWK and its Affiliates, to the extent applicable, in their individual capacities.

9.9 Successor Agent.

Agent may resign as Agent at any time upon 30 days' prior notice to Lenders and Borrower (unless during the existence of an Event of Default such notice is waived by Required Lenders). If Agent resigns under this Agreement, Required Lenders shall, with (so long as no Event of Default exists) the consent of Borrower (which shall not be unreasonably withheld or delayed), appoint from among Lenders a successor agent for Lenders. If no successor agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, on behalf of, and after consulting with Lenders and (so long as no Event of Default exists) Borrower, a successor agent from among Lenders. Upon the acceptance of its appointment as successor agent hereunder, such successor agent shall succeed to all the rights, powers and duties of the retiring Agent and the term "Agent" shall mean such successor agent, and the retiring Agent's appointment, powers and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent becomes effective, the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor agent has accepted appointment as Agent by the date which is thirty (30) days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and Lenders shall perform all of the duties of Agent hereunder until such time, if any, as Required Lenders appoint a successor agent as provided for above; *provided* that in the case of any collateral security held by Agent on behalf of the Lenders under any of the Loan Documents, the retiring Agent shall continue so to hold such collateral security until such time as a successor Agent is appointed and the provisions of this Section 9 and Sections 10.4 and 10.5 shall continue to inure to its benefit so long as retiring Agent shall continue to so hold such collateral security. Upon the acceptance of a successor's appointment as Agent hereunder, the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents in respect of the Collateral.

9.10 Collateral and Guarantee Matters.

Lenders irrevocably authorize Agent, at its option and in its discretion, (a) to release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full; (ii) constituting property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (including by consent, waiver or amendment and it being agreed

and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement); or (iii) subject to Section 10.1, if approved, authorized or ratified in writing by Required Lenders; (b) notwithstanding Section 10.1(a)(ii) hereof to release any party from its guaranty under the Guarantee and Collateral Agreement (i) when all Obligations have been Paid in Full or (ii) if such party was sold or is to be sold or disposed of as part of or in connection with any disposition permitted hereunder (including by consent, waiver or amendment and it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition being made in compliance with this Agreement); or (c) to subordinate its interest in any Collateral to any holder of a Lien on such Collateral which is permitted by Section 7.2(d) (it being understood that Agent may conclusively rely on a certificate from Borrower in determining whether the Debt secured by any such Lien is permitted by Section 7.1). Upon request by Agent at any time, Lenders will confirm in writing Agent's authority to release, or subordinate its interest in, particular types or items of Collateral pursuant to this Section 9.10.

Agent shall release any Lien granted to or held by Agent under any Collateral Document (i) when all Obligations have been Paid in Full, (ii) in respect of property sold or to be sold or disposed of as part of or in connection with any sale or other disposition permitted hereunder (it being agreed and understood that Agent may conclusively rely without further inquiry on a certificate of an officer of Borrower as to the sale or other disposition of property being made in compliance with this Agreement) or (iii) subject to Section 10.1, if directed to do so in writing by Required Lenders.

In furtherance of the foregoing, Agent agrees to execute and deliver to Borrower, at Borrower's expense, such termination and release documentation as Borrower may reasonably request to evidence a Lien release that occurs pursuant to terms of this Section 9.10.

#### 9.11 Intercreditor Agreements.

Each Lender hereby irrevocably appoints, designates and authorizes Agent to enter into one or more intercreditor agreements in relation to any other Debt of Borrower entered into in accordance with this Agreement or as otherwise approved by Required Lenders, on its behalf and to take such action on its behalf under the provisions of any such agreement (subject to the last sentence of this Section 9.11). Each Lender further agrees to be bound by the terms and conditions of any such intercreditor agreement. Each Lender hereby authorizes Agent to issue blockages notices in connection with any such Debt of Borrower and such intercreditor agreement, or any replacement intercreditor agreement, at the direction of Required Lenders.

#### 9.12 Actions in Concert.

For the sake of clarity, each Lender hereby agrees with each other Lender that no Lender shall take any action to protect or enforce its rights arising out of this Agreement, the Notes or any other Loan Document (including exercising any rights of setoff) without first obtaining the prior written consent of Agent and Required Lenders, it being the intent of Lenders that any such action to protect or enforce rights under this Agreement, the Notes and the other Loan Documents shall be taken in concert and at the direction or with the consent of Agent or Required Lenders.

Section 10 Miscellaneous.

10.1 Waiver: Amendments.

(a) Except as otherwise expressly provided in this Agreement, no amendment, modification or waiver of, or consent with respect to, any provision of this Agreement or any of the other Loan Documents shall in any event be effective unless the same shall be in writing and signed by Borrower (with respect to Loan Documents to which Borrower is a party), by Lenders having aggregate Pro Rata Term Loan Shares of not less than the aggregate Pro Rata Term Loan Shares expressly designated herein with respect thereto or, in the absence of such express designation herein, by Required Lenders, and then any such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that:

(i) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders directly affected thereby, in addition to Required Lenders and Borrower, do any of the following: (A) increase any of the Commitments (*provided* that only the Lenders participating in any such increase of the Commitments shall be considered directly affected by such increase), (B) extend the date scheduled for payment of any principal of (except as otherwise expressly set forth below in clause (C)), or Return Premium with respect to, the Loans or any fees or other amounts payable hereunder or under the other Loan Documents, or (C) reduce the principal amount of any Loan, the amount of the Return Premium, or any fees or other amounts payable hereunder or under the other Loan Documents; and

(ii) no such amendment, modification, waiver or consent shall, unless in writing and signed by all of the Lenders in addition to Borrower (with respect to Loan Documents to which Borrower is a party), do any of the following: (A) release any material guaranty under the Guarantee and Collateral Agreement or release all or substantially all of the Collateral granted under the Collateral Documents, except as otherwise specifically provided in this Agreement or the other Loan Documents, (B) change the definition of Required Lenders, (C) change any provision of this Section 10.1, (D) amend the provisions of Section 2.10.2, or (E) reduce the aggregate Pro Rata Term Loan Shares required to effect any amendment, modification, waiver or consent under the Loan Documents.

(b) No amendment, modification, waiver or consent shall, unless in writing and signed by Agent, in addition to Borrower and Required Lenders (or all Lenders directly affected thereby or all of the Lenders, as the case may be, in accordance with the provisions above), affect the rights, privileges, duties or obligations of Agent (including without limitation under the provisions of Section 9), under this Agreement or any other Loan Document.

(c) No delay on the part of Agent or any Lender in the exercise of any right, power or remedy shall operate as a waiver thereof, nor shall any single or partial exercise by any of them of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

10.2 Notices.

All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next

Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. Borrower, Agent and Lenders each hereby acknowledge that, from time to time, Agent, Lenders and Borrower may deliver information and notices using electronic mail.

#### 10.3 Computations.

Unless otherwise specifically provided herein, any accounting term used in this Agreement (including in Section 7.13 or any related definition) shall have the meaning customarily given such term in accordance with GAAP, and all financial computations (including pursuant to Section 7.13 and the related definitions, and with respect to the character or amount of any asset or liability or item of income or expense, or any consolidation or other accounting computation) hereunder shall be computed in accordance with GAAP consistently applied; *provided* that if Borrower notifies Agent that Borrower wishes to amend any covenant in Section 7.13 (or any related definition) to eliminate or to take into account the effect of any change in GAAP on the operation of such covenant (or if Agent notifies Borrower that Required Lenders wish to amend Section 7.13 (or any related definition) for such purpose), then Borrower's compliance with such covenant shall be determined on the basis of GAAP in effect immediately before the relevant change in GAAP became effective, until either such notice is withdrawn or such covenant (or related definition) is amended in a manner satisfactory to Borrower and Required Lenders. The explicit qualification of terms or computations by the phrase "in accordance with GAAP" shall in no way be construed to limit the foregoing. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (Codification of Accounting Standards 825-10) to value any Debt or other liabilities of any Loan Party or any Subsidiary at "fair value", as defined therein.

#### 10.4 Costs; Expenses.

Borrower agrees to pay on demand the reasonable, out-of-pocket costs and expenses of (a) Agent (including Legal Costs) in connection with (i) the preparation, execution, and delivery (including perfection and protection of Collateral) of this Agreement, the other Loan Documents and all other documents provided for herein or delivered or to be delivered hereunder or in connection herewith, (ii) the administration of the Loans and the Loan Documents, and (iii) any proposed or actual amendment, supplement or waiver to any Loan Document, and (b) Agent and Lenders (including Legal Costs) following the occurrence of an Event of Default in connection with the collection of the Obligations and enforcement of this Agreement, the other Loan Documents or any such other documents. In addition, Borrower agrees to pay and to save Agent and Lenders harmless from all liability for, any fees of Borrower's auditors in connection with any reasonable exercise by Agent and Lenders of their rights pursuant to and to the extent provided in Section 6.2. All Obligations provided for in this Section 10.4 shall survive repayment of the Loans, cancellation of the Notes, and termination of this Agreement.

#### 10.5 Indemnification by Borrower.

In consideration of the execution and delivery of this Agreement by Agent and Lenders and the agreement to extend the Commitments provided hereunder, Borrower hereby agrees to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any Loan Party or any of their respective officers, directors or agents,

including, without limitation, (a) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any Hazardous Substance at any property owned or leased by Borrower or any other Loan Party, (c) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Loan Party or the operations conducted thereon, (d) the investigation, cleanup or remediation of offsite locations at which any Loan Party or their respective predecessors are alleged to have directly or indirectly disposed of Hazardous Substances, (e) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result solely from (i) a dispute solely as among any Lender Parties, or (ii) gross negligence or willful misconduct of any Lender Party as finally determined by a court of competent jurisdiction in a non-appealable judgment, or (f) such Person's general operation of its business, including all product liability arising out of or in connection with such Person's or any of its Affiliates or licensees manufacture, use or sale of the FC2 Product. If and to the extent that the foregoing undertaking may be unenforceable for any reason, Borrower hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. All Obligations provided for in this Section 10.5 shall survive repayment of the Loans, cancellation of the Notes, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

#### 10.6 Marshaling; Payments Set Aside.

Neither Agent nor any Lender shall be under any obligation to marshal any assets in favor of Borrower or any other Person or against or in payment of any or all of the Obligations. To the extent that Borrower makes a payment or payments to Agent or any Lender, or Agent or any Lender enforces its Liens or exercises its rights of set-off, and such payment or payments or the proceeds of such enforcement or set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or any Lender in its discretion) to be repaid to a trustee, receiver or any other party in connection with any bankruptcy, insolvency or similar proceeding, or otherwise, then (a) to the fullest extent permitted by applicable law, to the extent of such recovery, the obligation hereunder or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred and (b) each Lender severally agrees to pay to Agent upon demand its ratable share of the total amount so recovered from or repaid by Agent to the extent paid to such Lender.

#### 10.7 Nonliability of Lenders.

The relationship between Borrower on the one hand and Lenders and Agent on the other hand shall be solely that of borrower and lender. Neither Agent nor any Lender shall have any fiduciary responsibility to Borrower. Neither Agent nor any Lender undertakes any responsibility to Borrower to review or inform Borrower of any matter in connection with any phase of Borrower's business or operations. To the fullest extent permitted under applicable law, execution of this Agreement by Borrower constitutes a full, complete and irrevocable release of any and all claims which Borrower may have at law or in equity in respect of all prior discussions and understandings, oral or written, relating to the subject matter of this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any liability with respect to, and Borrower hereby, to the fullest extent permitted under applicable law, waives, releases and agrees not to sue for, any special, indirect, punitive or consequential damages or liabilities.

## 10.8 Assignments.

### 10.8.1 Assignments.

(a) Any Lender may at any time assign to one or more Persons (other than a Loan Party and their respective Affiliates) (any such Person, an Assignee) all or any portion of such Lender's Loans and Commitments, with the prior written consent of Agent, and, so long as no Default or Event of Default has occurred and is continuing, Borrower (which consents shall not be unreasonably withheld or delayed), provided, however, that no such consent(s) shall be required:

(i) from Borrower for an assignment by a Lender to another Lender or an Affiliate of a Lender or an Approved Fund of a Lender, but such Lender will give written notice to Borrower of any such assignment;

(ii) from Agent for an assignment by a Lender to an Affiliate of a Lender or an Approved Fund of a Lender;

(iii) from Borrower or Agent for an assignment by SWK Funding LLC, as a Lender, to any Person for which SWK Advisors LLC acts as an investment advisor (or any similar type of representation or agency) pursuant to a written agreement, but SWK Funding LLC will give written notice to Borrower of any such assignment;

(iv) from Borrower or Agent for an assignment by a Lender of its Loans and its Note as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder); or

(v) from Borrower, Agent or any Lender for (A) the assignment of SWK's Loans and Commitments to a Permitted Assignee (as defined below) or (B) a collateral assignment by SWK of, and the grant by SWK of a security interest in, all of SWK's right, title and interest in, to and under each of the Loan Documents, including, without limitation, all of SWK's rights and interests in, to and under this Agreement, the Obligations and the Collateral (collectively, the "Assigned Rights"), to a Permitted Assignee, provided that no such collateral assignment shall release SWK from any of its obligations under any of the Loan Documents. In connection with any enforcement of or foreclosure upon its security interests in any of the Assigned Rights, a Permitted Assignee, upon notice to Borrower, SWK and the other Lenders, shall be entitled to substitute itself, or its designee, for SWK as a Lender under this Agreement. For purposes hereof, the term "Permitted Assignee" shall mean any lender to or funding source of SWK or its Affiliate, together with its successors, assigns or designees (including, without limitation, any purchaser or other assignee of the Assigned Rights from such Person). Effective immediately upon the replacement of SWK as a Lender under this Agreement by a Permitted Assignee in accordance with this clause (v), SWK shall automatically be deemed to have resigned as Agent pursuant to Section 9.9 of this Agreement (without the need for Agent giving advance written notice of such resignation as required pursuant to such Section 9.9), and Required Lenders shall appoint a successor Agent in accordance with Section 9.9 of this Agreement.

(b) From and after the date on which the conditions described above have been met, (i) such Assignee shall be deemed automatically to have become a party hereto and, to the extent that rights and obligations hereunder have been assigned to such 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 (other than its indemnification rights) and obligations hereunder. Upon the request of the Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, Borrower shall execute and deliver to Agent for delivery to the Assignee (and, as applicable, the assigning Lender) a Note in the principal amount of the Assignee's Pro Rata Term Loan Share (and, as applicable, a Note in the principal amount of the Pro Rata Term Loan Share retained by the assigning Lender). Each such Note shall be dated the effective date of such assignment. Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower any prior Note held by it.

(c) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices in the United States 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 of the Loans owing to, such Lender pursuant to the terms hereof. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and 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.

(d) Notwithstanding the foregoing provisions of this Section 10.8.1 or any other provision of this Agreement, any Lender may at any time assign all or any portion of its Loans and its Note (i) as collateral security to a Federal Reserve Bank or, as applicable, to such Lender's trustee for the benefit of its investors (but no such assignment shall release any Lender from any of its obligations hereunder) and (ii) to (w) an Affiliate of such Lender which is at least fifty percent (50%) owned (directly or indirectly) by such Lender or by its direct or indirect parent company, (x) its direct or indirect parent company, (y) to one or more other Lenders or (z) to an Approved Fund.

#### 10.9 Participations.

Any Lender may at any time sell to one or more Persons participating interests in its Loans, Commitments or other interests hereunder (any such Person, a "Participant"). In the event of a sale by a Lender of a participating interest to a Participant, (a) such Lender's obligations hereunder shall remain unchanged for all purposes, (b) Borrower and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder and (c) all amounts payable by Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. No Participant shall have any direct or indirect voting rights hereunder except with respect to any event described in Section 10.1 expressly requiring the unanimous vote of all Lenders or, as applicable, all affected Lenders. Each Lender agrees to incorporate the requirements of the preceding sentence into each participation agreement which such Lender enters into with any Participant. Borrower agrees, to the fullest extent permitted by applicable law, that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided* that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 2.10.4. Borrower also agrees that each Participant shall be entitled to the benefits of Section 3 as if it were a Lender (*provided* that a Participant shall not be entitled to such benefits unless such Participant agrees, for the benefit of Borrower, to comply with the documentation requirements of Section 3.1(c) as if it were a Lender and complies with such requirements, and *provided, further*, that no Participant shall receive any greater compensation pursuant to Section 3 than would have been paid to the participating Lender if no participation had been sold). Any such Lender transferring a participation shall, as an agent for Borrower, maintain in the United States a register to record the names, address, Return Premium,



principal and other amounts owing to, each Participant. The entries in such register shall be, in the absence of manifest error, conclusive, and Borrower, Agent and the Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Participant hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Participation register shall be available for inspection by the Agent or Borrower, at any reasonable time upon reasonable prior written notice from Agent or Borrower.

#### 10.10 Confidentiality.

Borrower, Agent and each Lender agree to use commercially reasonable efforts (equivalent to the efforts Borrower, Agent or such Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all information (including, without limitation, any information provided by Borrower pursuant to Sections 6.1, 6.2 and 6.9) provided to them by any other party hereto and/or any other Loan Party, as applicable, except that Agent and each Lender may disclose such information (a) to Persons employed or engaged by Agent or such Lender or any of their Affiliates (including collateral managers of Lenders) in evaluating, approving, structuring or administering the Loans and the Commitments (*provided* that such Persons have been informed of the covenants contained in this Section 10.10); (b) to any assignee or participant or potential assignee or participant that has agreed to comply with the covenants contained in this Section 10.10 (and any such assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any federal or state regulatory authority or examiner, or any insurance industry association, or as reasonably believed by Agent or such Lender to be compelled by any court decree, subpoena or legal or administrative order or process; (d) as, on the advice of Agent's or such Lender's counsel, is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any litigation to which Agent or such Lender is a party; (f) to any nationally recognized rating agency or investor of a Lender that requires access to information about a Lender's investment portfolio in connection with ratings issued or investment decisions with respect to such Lender; (g) that ceases to be confidential through no fault of Agent or any Lender; (h) to a Person that is an investor or prospective investor in a Securitization that agrees that its access to information regarding Borrower and the Loans and Commitments is solely for purposes of evaluating an investment in such Securitization and who agrees to treat such information as confidential; or (i) to a Person that is a trustee, collateral manager, servicer, noteholder or secured party in a Securitization in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For purposes of this Section, "Securitization" means a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans or the Commitments. In each case described in clauses (c), (d) and (e) (as such disclosure in clause (e) pertains to litigation only), where the Agent or Lender, as applicable, is compelled to disclose a Loan Party's confidential information, promptly after such disclosure the Agent or such Lender, as applicable, shall notify Borrower of such disclosure *provided, however*, that neither the Agent nor any Lender shall be required to notify Borrower of any such disclosure (i) to any federal or state banking regulatory authority conducting an examination of the Agent or such Lender, or (ii) to the extent that it is legally prohibited from so notifying Borrower. Notwithstanding the foregoing, Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements.

#### 10.11 Captions.

Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

#### 10.12 Nature of Remedies.

All Obligations of Borrower and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

#### 10.13 Counterparts.

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in “.pdf” format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including “.pdf”), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

#### 10.14 Severability.

The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

#### 10.15 Entire Agreement.

This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

#### 10.16 Successors; Assigns.

This Agreement shall be binding upon Borrower, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Borrower, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. Borrower may not assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent and each Lender.

#### 10.17 Governing Law.

THIS AGREEMENT AND EACH NOTE SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

10.18 Forum Selection: Consent to Jurisdiction.

ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

10.19 Waiver of Jury Trial.

EACH OF BORROWER, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, ANY NOTE, ANY OTHER LOAN DOCUMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH OR ARISING FROM ANY LENDING RELATIONSHIP EXISTING IN CONNECTION WITH ANY OF THE FOREGOING, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

10.20 Patriot Act.

Each Lender that is subject to the USA Patriot Act (Title III of Pub. L.107-56 (signed into law October 26, 2001)) (the "Patriot Act"), and Agent (for itself and not on behalf of any Lender), hereby notifies each Loan Party that, pursuant to the requirements of the Patriot Act, such Lender and Agent are required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or Agent, as applicable, to identify each Loan Party in accordance with the Patriot Act.

10.21 Independent Nature of Relationship.

Nothing herein contained shall constitute the Borrower and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 10.21 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof.

Neither the Borrower nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Borrower and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of the FC2 Product.

10.22 Limited Recourse.

(a) Notwithstanding any other provision of this Agreement or any of the other Loan Documents to the contrary, and except as expressly set forth in Section 10.22(b) below, the Agent and Lenders hereby agree that all Obligations of Borrower under this Agreement and the other Loan Documents are limited recourse Obligations, payable solely from payments by Borrower made hereunder and any other proceeds of the Collateral.

(b) Subject to the terms of Section 10.5 above, the obligations of Borrower under this Agreement (including, without limitation, any indemnity obligations hereunder (and any claims with respect thereto)) shall be full recourse Obligations with respect to any loss, damage, settlement, judgment, cost, expense, liability, claim or other obligation incurred by Agent or any Lender (including, without limitation, attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

- (i) any willful or intentional misrepresentation or gross negligence by Borrower or any of its Subsidiaries in connection with the Loan;
- (ii) any acts of fraud, intentional misappropriation of funds or theft by Borrower or any of its Subsidiaries; and
- (iii) Borrower or any of its Subsidiaries asserts any claim, defense, or offset against Agent or any Lender that such Person has waived or agreed not

to assert.

*[Remainder of page intentionally blank; signature pages follow]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their duly authorized officers as of the date first set forth above.

**BORROWER:**

**VERU INC.,**  
a Wisconsin corporation

By: /s/ Mitchell S. Steiner

Name: Mitchell S. Steiner, MD, FACS

Title: CEO and President

[Signature Page to Credit Agreement]

---

**AGENT AND LENDERS:**

**SWK FUNDING LLC,**  
as Agent and a Lender

By: SWK Holdings Corporation, its sole Manager

By: /s/ Winston Black

Name: Winston Black

Title: Chief Executive Officer

[Signature Page to Credit Agreement]

**RESIDUAL ROYALTY AGREEMENT**

This RESIDUAL ROYALTY AGREEMENT (this "Agreement") dated as of March 5, 2018 is between Veru Inc., a Wisconsin corporation (the "Company"), and SWK Funding LLC, a Delaware limited liability company ("SWK").

**WITNESSETH:**

WHEREAS, the Company, SWK and certain other financial institutions have entered into that certain Credit Agreement (as amended from time to time the "Credit Agreement"), dated as of the date hereof; capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement;

WHEREAS, as a condition to SWK's agreement to enter into the Credit Agreement and to make certain Loans thereunder, the Company and SWK have agreed to enter into this Agreement regarding the payment of certain Revenue-Based Payments (hereinafter defined) after SWK has received the Return Premium (hereinafter defined); and

WHEREAS, the Company and SWK desire to memorialize the terms and conditions regarding the payment of such Revenue-Based Payments as set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements, representations and warranties set forth herein and in the Credit Agreement and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto covenant and agree as follows:

**ARTICLE I**  
**DEFINED TERMS AND RULES OF CONSTRUCTION**

Section 1.1 Defined Terms. The following terms, as used herein, shall have the following respective meanings:

"Affiliate" of any Person means (a) any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person, (b) any managing member, officer or director of such Person and (c) with respect to SWK, any entity administered or managed by SWK or an Affiliate or investment advisor thereof which is engaged in making, purchasing, holding or otherwise investing in commercial loans. For purposes of the definition of the term "Affiliate", a Person shall be deemed to be "controlled by" any other Person if such Person possesses, directly or indirectly, power to vote ten percent (10%) or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managers or power to direct or cause the direction of the management and policies of such Person whether by contract or otherwise. SWK shall not be deemed to be an Affiliate of the Company.

"Authorizations" means all licenses, consents, certificates, permits, authorizations, approvals, franchises, registrations, qualifications and other rights obtained by applicable Governmental Authorities and self-regulatory authorities.

---

“Business Day” means any day on which commercial banks are open for commercial banking business in Dallas, Texas.

“Change of Control” means the occurrence of any of the following, unless such action has been consented to in advance in writing by SWK in its sole discretion:

(A) any Person acquires the direct or indirect ownership of more than fifty percent (50%) of the issued and outstanding voting Equity Interests of the Company in one or more related transactions;

(B) the Company shall at any time fail to own, directly or indirectly, 100% of the Equity Interests of each of its Subsidiaries (excluding Subsidiaries that do not own any FC2 Product, FC2 Intellectual Property or engage in the FC2 Business);

(C) any “change in/of control” or “sale” or “disposition” or “merger” or similar event as defined in any certificate of incorporation or formation or statement of designations or bylaws or operating agreement, as applicable, of the Company or in any document governing indebtedness of any Loan Party (other than any Loan Documents) in excess of \$250,000, individually or in the aggregate which gives the holder of such indebtedness the right to accelerate or otherwise require payment of such indebtedness prior to the maturity date thereof; or

(D) the sale of all or substantially all the assets of the Company, the sale of any material portion of the assets relating to the FC2 Product, or any merger, consolidation or acquisition by the Company which does not result in the Company being the sole surviving entity.

“CMS” means the Centers for Medicare and Medicaid Services of the United States of America.

“DEA” means the Federal Drug Enforcement Administration of the United States of America.

“Device Application” means a premarket approval application for a class III medical device, or a product license application for any Product, as those terms are defined in the FDA law and Regulation.

“Equity Interests” means, with respect to any Person, its equity ownership interests, its common stock and any other capital stock or other equity ownership units of such Person authorized from time to time, and any other shares, options, interests, participations or other equivalents (however designated) of or in such Person, whether voting or nonvoting, including, without limitation, common stock, options, warrants, preferred stock, phantom stock, membership units (common or preferred), stock appreciation rights, membership unit appreciation rights, convertible notes or debentures, stock purchase rights, membership unit purchase rights and all securities convertible, exercisable or exchangeable, in whole or in part, into any one or more of the foregoing.



“FC2 Business” means the business of the Company and its Subsidiaries relative to the FC2 Product and any related Services, including the development, manufacturing, importing, exporting, possession, ownership, warehousing, marketing promoting, sale, labeling, furnishing, distribution and delivery of the FC2 Product and related Services.

“FC2 Intellectual Property” means all Intellectual Property owned or leased by the Company and which is solely used in connection with the FC2 Product.

“FC2 Product” means that certain female condom product approved for market by FDA as a Class III medical device in 2009 and prequalified by the United Nations Fund for Population Activities (UNFPA) that provides dual protection against unintended pregnancy and sexually transmitted infections (STIs), including HIV/AIDS and the Zika virus, and its equivalent approved products elsewhere in the world, including any improvement thereof and any replacement or any other product to be used for the same or similar purposes.

“FDA” means the Food and Drug Administration of the United States of America.

“Fiscal Quarter” means a calendar quarter of a Fiscal Year.

“Fiscal Year” means the fiscal year of the Company, which period shall be the twelve (12) month period ending on September 30 of each year.

“GAAP” means generally accepted accounting principles in effect in the United States of America set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), which are applicable to the circumstances as of the date of determination.

“Guarantee and Collateral Agreement” means the Guarantee and Collateral Agreement dated as of the date hereof executed by each Loan Party signatory thereto in favor of Agent and Lenders.

“Hazardous Substances” means hazardous waste, pollutant, contaminant, toxic substance, oil, hazardous material, chemical or other substance regulated by any Environmental Law.

“Health Care Laws” mean all foreign, federal and state fraud and abuse laws relating to the regulation of healthcare products, pharmaceutical products, laboratory facilities and services, healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors, including but not limited to (i) the federal Anti-Kickback Statute (42 U.S.C. (§1320a-7b(b))), the Stark Law (42 U.S.C. §1395nn and §1395(q)), the civil False Claims Act (31 U.S.C. §3729 et seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Section 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (ii) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), as amended by the Health Information, Technology for Economic and Clinical Health Act of 2009, and the regulations promulgated thereunder, (iii) Medicare (Title XVIII of the Social Security Act) and the regulations promulgated thereunder; (iv) Medicaid (Title XIX of the Social Security Act) and the regulations promulgated thereunder; (v) the FD&C Act and all applicable

requirements, regulations and guidances issued thereunder by the FDA (including FDA Law and Regulation); (vi) the Controlled Substances Act, as amended, and all applicable requirements, regulations and guidances issued thereunder by the DEA; (vii) CLIA, as amended, and all applicable requirements, regulations, and guidance issued thereunder by the applicable Governmental Authority; (viii) quality, safety and accreditation standards and requirements of all applicable foreign and domestic federal, provincial or state laws or regulatory bodies; (ix) all applicable licensure laws and regulations; (x) all applicable professional standards regulating healthcare providers, healthcare professionals, healthcare facilities, clinical research facilities or healthcare payors; and (xi) any and all other applicable health care laws (whether foreign or domestic), regulations, manual provisions, policies and administrative guidance, including those related to the corporate practice of medicine, fee-splitting, state anti-kickback or self-referral prohibitions, each of clauses (i) through (xi) as may be amended from time to time.

“Intellectual Property” shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses (as defined in the Guarantee and Collateral Agreement), internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any intellectual property rights relating thereto) and Copyright Licenses (as defined in the Guarantee and Collateral Agreement) and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses (as defined in the Guarantee and Collateral Agreement); Mask Works (as defined in the Guarantee and Collateral Agreement); industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing, in each case, solely used in connection with the FC2 Product.

“Material Adverse Effect” means (a) a material adverse change in, or a material and adverse effect upon, the condition (financial or otherwise), operations, assets, business or properties of the Company and/or its Subsidiaries involved in the manufacturing or distribution of the FC2 Product taken as a whole, or (b) a material impairment of the ability of the Company to perform any of its payment obligations under this Agreement.

“Net Sales” means the gross amount billed or invoiced by the Company for Services and for the sale of the FC2 Product and (including products and services ancillary thereto) to independent customers, less deductions for (a) quantity, trade, cash or other discounts, allowances, credits or rebates (including customer rebates) actually allowed or taken, (b) amounts deducted, repaid or credited by reason of rejections or returns of goods and government mandated rebates, or because of chargebacks or retroactive price reductions, (c) taxes, tariffs,

---

duties or other governmental charges or assessments (including any sales, value added or similar taxes other than an income tax) levied, absorbed or otherwise imposed on or with respect to the production, sale, transportation, delivery or use of pharmaceutical products, and (d) shipping/freight charges for the customer invoiced by the Company as an accommodation for which the Company is later charged and is required to pay. The FC2 Product or a Service shall be considered sold and/or provided when billed out or invoiced. To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP. For the purposes of calculating Net Sales, SWK understands and agrees that (i) Affiliates of the Company shall not be regarded as independent customers and (ii) Net Sales shall not include the FC2 Product distributed for product development purposes, including for use in pre-clinical trials.

“Payment Date” means the fifteenth (15<sup>th</sup>) day of each of February, May, August and November (or the next succeeding Business Day to the extent such 15<sup>th</sup> day is not a Business Day).

“Permits” means, with respect to any Person any permit, approval, clearance, authorization, license, registration, certificate, concession, grant, franchise, variance or permission from, and any other contractual obligations with, any Governmental Authority, in each case whether or not having the force of law and applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject, including without limitation all registrations with Governmental Authorities, in each case, limited only to any of the same relating to the FC2 Product and/or FC2 Business.

“Person” means any natural person, corporation, partnership, trust, limited liability company, association, Governmental Authority or unit, or any other entity, whether acting in an individual, fiduciary or other capacity.

“Required Permit” means a Permit (a) required under applicable law to the FC2 Business or necessary in the manufacturing, importing, exporting, possession, ownership, warehousing, marketing, promoting, sale, labeling, furnishing, distribution or delivery of the FC2 Product under any laws applicable to the business of the Company (including, without limitation, any Health Care Laws) or any new Device Application, abbreviated drug application, or product license application for the FC2 Product (including without limitation, at any point in time, all licenses, approvals and permits issued by the FDA, CMS, or any other applicable Governmental Authority necessary for the testing, manufacture, marketing or sale of the FC2 Product by the Company or any of its Affiliates as such activities are being conducted by the Company or its Affiliates with respect to the FC2 Product at such time), and (b) required by any Person from which the Company or any of its Affiliates have received an accreditation relative to the FC2 Business.

“Residual Royalty Commencement Date” means, the date on which Product Revenue received by the Company has or will result in the payment in full of the Return Premium pursuant to Section 2.9.1 of the Credit Agreement, notwithstanding that the Company shall have paid the Return Premium (or balance thereof) in full to SWK, in its capacity as Agent for the Lenders, at a later date.

“Royalties” means the amount of any and all royalties, license fees and any other payments or income of any type recognized as revenue in accordance with GAAP by the Company with respect to the sale of the FC2 Product or the provision of services by independent licensees of the Company relative to the FC2 Product and/or FC2 Business, including any such payments characterized as a share of net profits, any up-front or lump sum payments, any milestone payments, commissions, fees or any other similar amounts, less deductions for amounts deducted, repaid or credited by reason of adjustments to the sales upon which royalty amounts are based, regardless of the reason for such adjustment to such sales. For the purposes of calculating Royalties, SWK understands and agrees that Affiliates of the Company shall not be regarded as independent licensees.

“Services” means services relating exclusively to the FC2 Product provided by the Company or any Affiliate of the Company and non-Affiliated Persons, including without limitation any sales, laboratory analysis, testing, consulting, marketing, commercialization and any other healthcare-related services.

“Subsidiaries” means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which such Person owns, directly or indirectly, such number of outstanding shares or other equity interests as to have more than fifty percent (50%) of the ordinary voting power for the election of directors or other managers of such corporation, partnership, limited liability company or other entity. Unless the context otherwise requires, each reference to Subsidiaries herein shall be a reference to direct and indirect Subsidiaries of the Company.

Section 1.2 Rules of Construction. Unless the context otherwise requires, in this Agreement:

- (a) A term has the meaning assigned to it and an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.
- (b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words in the singular shall include the plural, and vice versa.
- (c) The terms “include”, “including” and similar terms shall be construed as if followed by the phrase “without limitation”.
- (d) References to an agreement or other document include references to such agreement or document as amended, restated, reformed, supplemented or otherwise modified in accordance with the terms hereof and thereof and include any annexes, exhibits and schedules attached thereto.

(e) References to any statute or other legislative provision shall include any statutory or legislative modification or re-enactment thereof, or any substitution therefor.

(f) References to any Person shall be construed to include such Person's successors and permitted assigns.

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) The words "hereof", "herein", "hereunder" and similar terms when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision hereof, and Article, Section and Exhibit references herein are references to Articles and Sections of, and Exhibits to, this Agreement unless otherwise specified.

(i) In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and each of the words "to" and "until" means "to but excluding".

(j) Where any payment is to be made, any funds are to be applied or any calculation is to be made under this Agreement on a day that is not a Business Day, unless this Agreement otherwise provides, such payment shall be made, such funds shall be applied and such calculation shall be made on the succeeding Business Day, and payments shall be adjusted accordingly.

## ARTICLE II RESIDUAL ROYALTY PAYMENTS

### Section 2.1 Revenue-Based Payment

(a) Commencing as of the Residual Royalty Commencement Date, the Company promises to pay to SWK, an amount based on a percentage of the aggregate of (without duplication) the Net Sales, Royalties and any other income or revenue realized by the Company solely related to or arising from the FC2 Product, calculated in accordance with GAAP (collectively, the "Product Revenue") in each Fiscal Quarter (or, in the case of the initial Fiscal Quarter in which the Residual Royalty Commencement Date occurs, partial Fiscal Quarter) (the "Revenue-Based Payment"). The Revenue-Based Payment with respect to each Fiscal Quarter shall be payable on the Payment Date next following the end of such Fiscal Quarter. The Revenue-Based Payment with respect to each Fiscal Quarter shall be calculated as, five percent (5.00%) of Product Revenue during the applicable Fiscal Quarter (or portion thereof during the first Fiscal Quarter). For purposes of clarity, (i) Product Revenue pertaining to any Fiscal Quarter (or portion thereof with respect to the Fiscal Quarter containing the Residual Royalty Commencement Date) arising prior to the Residual Royalty Commencement Date, and all payments relating thereto, shall be payable in accordance with the terms of the Credit Agreement, and (ii) all Product Revenue pertaining to the portion of the Fiscal Quarter containing the Residual Royalty Commencement Date occurring after the Residual Royalty Commencement Date and all Product Revenue pertaining to any Fiscal Quarters thereafter, and all payments relating thereto, shall be payable in accordance with the terms of this Agreement. No dollar of Product Revenue shall be subject to both the obligation to pay a percentage thereof to the Agent under the Credit Agreement and the obligation to pay a percentage thereof to SWK as a Revenue-Based Payment hereunder.

(b) In the event that the Company makes any adjustment to Product Revenue after it has been reported to SWK, and such adjustment results in an adjustment to the Revenue-Based Payment due to SWK pursuant to this Section 2.1, the Company shall so notify SWK and such adjustment shall be captured, reported and reconciled with the next scheduled report and payment of Revenue-Based Payment hereunder. Notwithstanding the foregoing, SWK and the Company shall discuss and agree on the amount of any such adjustment prior to it being given effect with respect to future Revenue-Based Payments.

Section 2.2 Payment Upon Change of Control. Upon a Change of Control or sale of the FC2 Business to a third-party, non-Affiliate of the Company, the Company shall immediately upon consummation of such transaction, pay to SWK an amount equal to the greater of (1) \$2,000,000, or (2) the product of (x) five percent (5.00%) of the Net Sales attributable to the FC2 Product for the most recently-completed twelve (12) months period, multiplied by (y) five (5) (as applicable, the "Change of Control Payment").

Section 2.3 Payments. All payments due under this Agreement shall be made by the Company in immediately-available funds, without set-off or deduction, via wire transfer as directed by SWK in writing. Not later than two (2) Business Days prior to each Payment Date, SWK shall provide to the Company a quarterly statement with the amounts payable by the Company to SWK on such Payment Date, which shall include, for additional clarity, SWK's calculation of the Revenue-Based Payment for the prior Fiscal Quarter, which statement shall be binding on the Company absent manifest error, and the Company shall be entitled to rely on such quarterly statement in relation to its payment obligations on such Payment Date.

Section 2.4 Taxes.

(a) Notwithstanding the accounting treatment thereof, for United States federal, state and local tax purposes, the Company and SWK shall treat the transactions contemplated herein as interest for United States federal, state and local tax purposes.

(b) The parties hereto agree not to take any position that is inconsistent with the provisions of Section 2.4(a) on any tax return or in any audit or other administrative or judicial proceeding unless (i) the other party hereto has consented to such actions or (ii) the party hereto that contemplates taking such an inconsistent position has been advised by nationally recognized tax counsel in writing that there is no "reasonable basis" (within the meaning of Treasury Regulation Section 1.6662-3(b)(3)) for the position specified in Section 2.4(a). If there is an inquiry by any Governmental Authority of the Company or SWK related to this Section 2.4, the parties hereto shall cooperate with each other in responding to such inquiry in a reasonable manner consistent with this Section 2.4.

ARTICLE III  
COVENANTS

Section 3.1 Revenue-Based Payment Reconciliation. As soon as available but not later than five (5) Business Days prior to each Payment Date, the Company shall furnish to SWK, a report, in form reasonably acceptable to SWK, reconciling in each geographic territory where the Company operates, the Net Sales, Royalties, and all other revenue arising from the FC2 Product reported by the Company to SWK during any reporting period to the Product Revenue reported by the Company hereunder for such period and the amount of Revenue-Based Payment(s) made by the Company in connection with such period(s).

Section 3.2 Audits. Beginning on the Residual Royalty Commencement Date, the Company shall, upon SWK's written request (and using an accountant designated by SWK and reasonably satisfactory to the Company, the "Designated Auditor"), inspect and audit the Company's books and records, no more often than once on an annual basis, regarding the Revenue-Based Payments or the Change of Control Payment (together, the "Company Payments") that are paid or payable to SWK pursuant to the terms of this Agreement. The Company and SWK agree that each party shall bear its own costs and expenses relating to such inspection and audit of the Company's books and records other than the expenses of the Designated Auditor, which shall be borne by SWK; provided, that if the amount of the Company Payments that should have been made to SWK is equal to or greater than 120% of the amount of the Company Payments actually made to SWK during the applicable audited period, then all of the expenses of the Designated Auditor relating to such inspection or audit shall be borne and paid for by the Company up to the maximum dollar amount of \$100,000.

Section 3.3 Conduct of Business. The Company shall, and shall cause each of its Subsidiaries, as applicable, to, (i) collect the Product Revenue in the ordinary course of business, (ii) maintain and keep in full force and effect all material Permits and qualifications to do business and good standing in its jurisdiction of formation and each other jurisdiction in which the ownership or lease of property or the nature of its business makes such Permits or qualification necessary in order to operate the FC2 Business and in which failure to maintain such Permits or qualification could reasonably be expected to be, have or result in a Material Adverse Effect; (iii) remain in good standing and maintain operations in all jurisdictions in which it is currently located, except where the failure to remain in good standing or maintain operations would not reasonably be expected to be, have or result in a Material Adverse Effect, and (iv) maintain, comply with and keep in full force and effect all FC2 Intellectual Property and Permits necessary to conduct the FC2 Business, except in each case where the failure to maintain, comply with or keep in full force and effect could not reasonably be expected to be, have or result in a Material Adverse Effect

Section 3.4 Compliance with Health Care Laws.

(a) Without limiting or qualifying any provision of this Agreement, the Company will comply, and will cause each of its Subsidiaries to comply, in all material respects with all applicable Health Care Laws relating to the operation of the FC2 Business, except where failure to comply would not reasonably be expected to have a Material Adverse Effect.

(b) The Company will, and will cause each of its Subsidiaries to:

(i) Keep in full force and effect all Authorizations required to operate the FC2 Business under applicable Health Care Laws and maintain any other qualifications necessary to conduct, arrange for, administer, provide services in connection with or receive payment for all applicable Services, except to the extent such failure to keep in full force and effect or maintain would not reasonably be expected to have a Material Adverse Effect.

(ii) Promptly furnish or cause to be furnished to SWK, with respect to matters that could reasonably be expected to have a Material Adverse Effect, (w) copies of all material reports of investigational/inspectional observations issued to and received by the Company or any of its Subsidiaries, and issued by any Governmental Authority relating to the FC2 Business, (x) copies of all material establishment investigation/inspection reports (including, but not limited to, FDA Form 483's) issued to and received by the Company or any of its Subsidiaries and issued by any Governmental Authority relative to the FC2 Product, (y) copies of all material warnings and material untitled letters as well as other material documents received by the Company or any of its Subsidiaries from the FDA, CMS, DEA, or any other Governmental Authority relating to or arising out of the conduct applicable to the FC2 Business of the Company or any of its Subsidiaries that asserts past or ongoing lack of compliance with any Health Care Law or any other applicable foreign, federal, state or local law or regulation of similar import and (z) notice of any material investigation or material audit or similar proceeding by the FDA, DEA, CMS, or any other Governmental Authority.

(iii) Promptly furnish or cause to be furnished to SWK, with respect to matters that would reasonably be expected to have a Material Adverse Effect, copies of all non-privileged, reports, correspondence, pleadings and other communications relating to any matter referred to in clause (ii) above that could lead to the loss, revocation or suspension (or threatened loss, revocation or suspension) of any material Authorization or of any material qualification of the Company or any Subsidiary relating to the FC2 Business; *provided* that any internal reports to a Person's compliance "hot line" which are promptly investigated and determined to be without merit need not be reported.

(iv) Promptly furnish or cause to be furnished to SWK notice of all material fines or penalties imposed by any Governmental Authority under any Health Care Law against the Company or any of its Subsidiaries relative to the FC2 Business.

(v) Promptly furnish or cause to be furnished to SWK notice of all material allegations by any Governmental Authority (or any agent thereof) of fraudulent activities of the Company or any of its Subsidiaries in relation to the provision of clinical research or related services relative to the FC2 Business.

Notwithstanding anything to the contrary in this Agreement, the Company or any of its Subsidiaries shall not be required to furnish to SWK patient-related or other information, the disclosure of which to SWK is prohibited by any applicable law.



ARTICLE IV  
MISCELLANEOUS

Section 4.1 Remedies Upon an Event of Default

(a) Upon the occurrence and continuation of a default by the Company, SWK may exercise any and all rights, options and remedies provided for in this Agreement, under any applicable laws or otherwise at law or in equity, including, without limitation, the right to specific performance of this Agreement.

(b) The enumeration of any rights and remedies in this Agreement is not intended to be exhaustive, and all rights and remedies of SWK described herein are cumulative and are not alternative to or exclusive of any other rights or remedies which SWK otherwise may have. The partial or complete exercise of any right or remedy shall not preclude any other further exercise of such or any other right or remedy.

Section 4.2 Payment Default. In addition to the remedies set forth in Section 4.1, if the Company fails to pay any Revenue-Based Payment within thirty (30) days after the applicable Payment Date, all such unpaid amounts shall bear interest at a rate of ten percent (10%) per annum, compounded annually ("Default Interest"), commencing on the applicable Payment Date in which such Revenue-Based Payment was not paid and continuing until such time as the unpaid Revenue-Based Payment is paid. The receipt by SWK of such Default Interest shall not be construed as a waiver by SWK of any default or any of the rights or remedies of SWK under this Agreement.

Section 4.3 Termination of Agreement. This Agreement shall terminate upon the first to occur of the following: (i) the receipt by SWK of the Change of Control Payment and all other unpaid Revenue-Based Payments owed to SWK under this Agreement for periods prior to such Change of Control, and (ii) the Company and SWK mutually agree in writing to terminate this Agreement.

Section 4.4 Nature of Remedies. All of the obligations of the Company and rights of SWK expressed herein shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of SWK, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 4.5 Notices. All notices hereunder shall be in writing (including via electronic mail) and shall be sent to the applicable party at its address shown on Annex II or at such other address as such party may, by written notice received by the other parties, have designated as its address for such purpose. Notices sent by electronic mail transmission shall be deemed to have been given when sent if sent during regular business hours on a Business Day, otherwise, such deemed delivery will be effective as of the next Business Day; notices sent by mail shall be deemed to have been given five (5) Business Days after the date when sent by registered or certified mail, first class postage prepaid; and notices sent by hand delivery or overnight courier service shall be deemed to have been given when received. The Company and SWK each hereby acknowledge that, from time to time, SWK and the Company may deliver information and notices using electronic mail.

---

if to the Company, to:

Veru Inc.  
4400 Biscayne Blvd. Suite 888  
Miami, FL 33138  
Email: pgreenberg@verupharma.com  
Attn: Philip R Greenberg

With a copy (that does not constitute notice) to:

Greenberg Traurig, LLP  
333 S.E. 2nd Avenue  
Miami, FL 33131  
Email: samekj@gtlaw.com  
Attn: Joshua M. Samek, Esq.

if to SWK, to:

SWK Funding LLC  
c/o SWK Holdings  
14755 Preston Road, Suite 105  
Dallas, Texas 75254  
Attn: Winston Black

With a copy (that does not constitute notice) to:

Holland & Knight LLP  
200 Crescent Court, Suite 1600  
Dallas, Texas 75201  
Attn: Ryan Magee

Section 4.6 Successors and Assigns. This Agreement shall be binding upon the Company and SWK and their respective successors and assigns, and shall inure to the benefit of the Company and SWK and the successors and assigns of SWK. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement. The Company may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of SWK.

Section 4.7 Independent Nature of Relationship. Nothing herein contained shall constitute the Company and SWK as a partnership, an association, a joint venture or any other kind of entity or legal form or constitute any party the agent of the other. No party shall hold itself out contrary to the terms of this Section 4.7 and no party shall become liable by any representation, act or omission of the other contrary to the provisions hereof. Neither the Company nor SWK has any fiduciary or other special relationship with the other party hereto or any of its Affiliates. The Company and SWK agree that SWK is not involved in or responsible for the manufacture, marketing or sale of the FC2 Product.

---

Section 4.8 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Section 4.9 Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

Section 4.10 Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 4.11 Waiver of Jury Trial. EACH PARTY HERETO, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

Section 4.12 Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

---

Section 4.13 Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in “.pdf” format through electronic mail of any executed signature page to this Agreement shall constitute effective delivery of such signature page. This Agreement to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including “.pdf”), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

Section 4.14 Amendments; No Waivers. Neither this Agreement nor any term or provision hereof may be amended, supplemented, restated, waived, changed or modified except with the written consent of the parties hereto. No failure or delay by either party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on either party hereto in any case shall entitle it to any notice or demand in similar or other circumstances. No waiver or approval hereunder shall, except as may otherwise be stated in such waiver or approval, be applicable to subsequent transactions. No waiver or approval hereunder shall require any similar or dissimilar waiver or approval thereafter to be granted hereunder. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 4.15 Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

[SIGNATURE PAGE FOLLOWS]

---

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

VERU INC.

By: /s/ Mitchell S. Steiner  
Name: Mitchell S. Steiner, MD., FACS  
Title: CEO and President

SWK FUNDING LLC

By: SWK Holdings Corporation,  
its sole Manager

By: /s/ Winston Black  
Name: Winston Black  
Title: Chief Executive Officer

*[Signature Page to Residual Royalty Agreement]*

---

---

GUARANTEE AND COLLATERAL AGREEMENT

dated as of March 5, 2018

between

**VERU INC.,**  
as Grantor,

and

SWK FUNDING LLC,  
as Agent

---

---

## GUARANTEE AND COLLATERAL AGREEMENT

GUARANTEE AND COLLATERAL AGREEMENT, dated as of March 5, 2018 (as may be amended, restated, supplemented, or otherwise modified from time to time, this "Agreement"), made by each signatory hereto (together with any other Person that becomes a party hereto as provided herein, each individually a "Grantor" and collectively, the "Grantors"), in favor of SWK FUNDING LLC, as Agent ("Agent") for the benefit of all Lenders party to the Credit Agreement (as hereafter defined).

Agent and Lenders have severally agreed to extend credit to VERU INC., a Wisconsin corporation (the "Borrower"), pursuant to the Credit Agreement. The Borrower is affiliated with each other Grantor. The Borrower and the other Grantors are engaged in interrelated businesses, and each Grantor will derive substantial direct and indirect benefit from extensions of credit under the Credit Agreement. It is a condition precedent to each Lender's obligation to extend credit under the Credit Agreement that Grantors shall have executed and delivered this Agreement to Agent for the ratable benefit of all Lenders.

In consideration of the premises and to induce Agent and Lenders to enter into the Credit Agreement and to induce Agent and Lenders to extend credit thereunder, each Grantor hereby agrees with Agent, for the ratable benefit of Lenders, as follows:

### 1. Definitions.

1.1. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement, and the following terms are used herein as defined in the Code: Accounts, Money, Certificated Security, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Electronic Chattel Paper, Equipment, Farm Products, Goods, Health-Care-Insurance Receivables, Instruments, Inventory, Letter-of-Credit Rights, Software and Supporting Obligations.

1.2. When used herein the following terms shall have the following meanings:

Agreement has the meaning set forth in the preamble hereto.

Borrower Obligations means all Obligations of Borrower.

Code means the Uniform Commercial Code as in effect from time to time in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Code as in effect in a jurisdiction other than the State of New York, "Code" means the Uniform Commercial Code, as applicable if the context requires, as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

Collateral has the meaning set forth in Section 3 hereof. Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Grantor, shall refer to such Grantor's Collateral or the relevant part thereof.

Copyrights shall mean all of Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to, the following, in each case, solely related to the FC2 Product: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

Copyright Licenses means all written agreements naming any Grantor as licensor or licensee, including those listed on Schedule 4, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright (other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses).

Credit Agreement means that certain Credit Agreement, of even date herewith, among Borrower, Lenders and Agent, as amended, supplemented, restated or otherwise modified from time to time.

Excluded Property means, with respect to a Grantor: (i) any item of General Intangibles or other property (including, without limitation, any Material Contract) that is now or hereafter held by such Grantor but only to the extent that such item of General Intangibles or property, including, for the avoidance of doubt, FC2 Intellectual Property (or any agreement evidencing such item of General Intangibles or property) contains a term or is subject to a rule of law, statute or regulation that restricts, prohibits, or requires a consent (that has not been obtained) of a Person (other than such Grantor) to, the creation, attachment or perfection of the security interest granted herein, and any such restriction, prohibition and/or requirement of consent is effective and enforceable under applicable law and is not rendered ineffective by applicable law (including, without limitation, pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the Code); provided, however, that (x) Excluded Property shall not include any Proceeds of any item of General Intangibles or other property described in this definition, and (y) any item of General Intangibles or such other property described in this definition that at any time ceases to satisfy the criteria for Excluded Property (whether as a result of obtaining any necessary consent, any change in any rule of law, statute or regulation, or otherwise) shall no longer be Excluded Property; (ii) trademark applications filed in the United States Patent and Trademark Office on the basis of such Grantor’s “intent to use” such trademark, unless and until acceptable evidence of use of the Trademark has been filed with the United States Patent and Trademark Office pursuant to Section 1(c) or Section 1(d) of the Lanham Act (15 U.S.C. 1051, et seq.), to the extent that granting a Lien in such Trademark application prior to such filing would adversely affect the enforceability or validity of such Trademark application; (iii) any asset subject to a Permitted Lien (other than Liens in favor of Agent) securing obligations permitted under the Credit Agreement to the extent that the grant of other Liens on such asset (A) would result in a breach or violation of, or constitute a default under, the agreement or instrument governing such Permitted Lien, (B) would result in the loss of use of such asset or (C) would permit the holder of such Permitted Lien to terminate such Grantor’s use of such asset; (iv) in excess of 65% of the voting stock of any foreign Subsidiary; (v) any Exempt Accounts; and (vi) any assets or properties of Grantors relating exclusively to businesses, assets or Products other than the FC2 Product.

FC2 Intellectual Property means all Intellectual Property owned or leased by Borrower and which is solely used in connection with the FC2 Product.

Fixtures means all of the following, whether now owned or hereafter acquired by a Grantor: plant fixtures; business fixtures; other fixtures and storage facilities, wherever located; and all additions and accessories thereto and replacements therefor, in each case, solely related to the FC2 Product.

General Intangibles means all “general intangibles” as such term is defined in Section 9-102(a)(42) of the Code and, in any event, including with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property of such Grantor is subject, as the same from time to time may be amended, supplemented or otherwise



modified, including, without limitation, (a) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (b) all rights of such Grantor to damages arising thereunder and (c) all rights of such Grantor to perform and to exercise all remedies thereunder, in each case, solely related to the FC2 Product.

Guarantor Obligations means, collectively, with respect to each Guarantor, all payment and performance obligations of such Guarantor hereunder or under any other Loan Document to which such Guarantor is party.

Guarantors means the collective reference to each Grantor other than Borrower.

Identified Claims means the Commercial Tort Claims described on Schedule 6 as such schedule may be supplemented from time to time.

Intellectual Property shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any intellectual property rights relating thereto) and Copyright Licenses, and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses; Mask Works; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing, in each case, solely used in connection with the FC2 Product.

Intercompany Note means any promissory note evidencing loans made by any Grantor to any other Grantor or its Affiliate.

Investment Property means the collective reference to (a) all "investment property" as such term is defined in Section 9-102(a)(49) of the Code (other than the equity interest of any Subsidiary excluded from the definition of Pledged Equity), (b) all "financial assets" as such term is defined in Section 8-102(a)(9) of the Code, and (c) whether or not constituting "investment property" as so defined, all Pledged Notes and all Pledged Equity.

Issuers means the collective reference to each issuer of any Investment Property.

Mask Works means all of any Grantor's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to, mask works or similar rights available for the protection of semiconductor chips, in each case, solely related to the FC2 Product.

Patents shall mean all of Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title and interest in and to, the following, in each case, solely related to the FC2 Product: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any

time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

Patent Licenses means all agreements, whether written or oral, providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including any of the foregoing referred to in Schedule 4, solely related to the FC2 Product.

Permitted Liens has the meaning ascribed such term in the Credit Agreement.

Pledged Equity means the equity interests listed on Schedule 1, as amended from time to time, together with any other equity interests, certificates, options or rights of any nature whatsoever in respect of the equity interests of any Person that may be issued or granted to, or held by, any Grantor while this Agreement is in effect.

Pledged Notes means all promissory notes listed on Schedule 1, all Intercompany Notes at any time issued to any Grantor and all other promissory notes issued to or held by any Grantor (other than promissory notes issued in connection with extensions of trade credit by any Grantor in the ordinary course of business).

Proceeds means all "proceeds" as such term is defined in Section 9-102(a)(64) of the Code and, in any event, shall include all dividends or other income from the Investment Property, collections thereon or distributions or payments with respect thereto.

Receivable means any right to payment for goods sold or leased or for services rendered, whether or not such right is evidenced by an Instrument or Chattel Paper and whether or not it has been earned by performance (including any Accounts), arising solely from sales of the FC2 Product.

Registered Intellectual Property has the meaning ascribed such term in the Credit Agreement.

Secured Obligations means, collectively, all Borrower Obligations and Guarantor Obligations.

Securities Act means the Securities Act of 1933, as amended.

Trademarks shall mean all of each Borrower's (or if referring to another Person, such other Person's) now existing or hereafter acquired right, title, and interest in and to the following, in each case, solely related to the FC2 Product: (i) all of Borrower's (or if referring to another Person, such other Person's) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

Trademark Licenses means, collectively, each agreement, whether written or oral, providing for the grant by or to any Grantor of any right to use any Trademark, including any of the foregoing referred to in Schedule 4 solely related to the FC2 Product.

## 2. Guarantee.

### 2.1. Guarantee.

(a) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to Agent, for the ratable benefit of Lenders and their respective successors, indorsees, transfers and assigns to the extent permitted by and in accordance with the Credit Agreement, the prompt and complete payment and performance by Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations.

(b) The guarantee contained in this Section 2 shall remain in full force and effect and shall serve as a continuing security, until all of the Borrower Obligations have been Paid in Full.

(c) No payment made by Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by Agent or any Lender from Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Secured Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Secured Obligations or any payment received or collected from such Guarantor in respect of the Secured Obligations), remain liable for the Secured Obligations up to the maximum liability of such Guarantor hereunder until the Secured Obligations are Paid in Full.

2.2. Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 2.3. The provisions of this Section 2.2 shall in no respect limit the obligations and liabilities of any Guarantor to Agent and Lenders, and each Guarantor shall remain liable to Agent and Lenders for the full amount guaranteed by such Guarantor hereunder.

2.3. No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of Agent or any Lender against Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by Agent or any Lender for the payment of the Borrower Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all of the Borrower Obligations are Paid in Full. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Secured Obligations shall not have been Paid in Full, such amount shall be held by such Guarantor in trust for Agent and Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be promptly turned over to Agent in the exact form received by such Guarantor (duly indorsed (but without any representation or warranty) by such Guarantor to Agent, if required), to be applied against the Secured Obligations, whether matured or unmatured, in a manner that is consistent with the provisions of Section 2.10.2 of the Credit Agreement.

2.4. Amendments, etc. with Respect to the Secured Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Secured Obligations made by Agent or any Lender may be rescinded by Agent or such Lender and

any of the Secured Obligations continued, and the Secured Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, supplemented or terminated, in whole or in part, as Agent (or the Required Lenders or all Lenders, as the case may be) may deem advisable from time to time (provided that any such amendment, modification, supplement or termination complies with the relevant provisions of the Credit Agreement, this Agreement and/or such Loan Document), and any collateral security, guarantee or right of offset at any time held by Agent or any Lender for the payment of the Secured Obligations may be sold, exchanged, waived, surrendered or released to the extent permitted by the Credit Agreement, this Agreement and the other Loan Documents. Neither Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Secured Obligations or for the guarantee contained in this Section 2 or any property subject thereto.

**2.5. Guarantee Absolute and Unconditional: Waivers**

(a) Each Guarantor agrees that this Agreement is a guaranty of payment and performance when due and not of collectability. The liability of Guarantor under this Agreement shall be absolute, irrevocable and unconditional irrespective of:

(i) any lack of validity, regularity or enforceability of any Loan Document;

(ii) any lack of validity, regularity or enforceability of this Agreement;

(iii) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to departure from any Loan Document;

(iv) any exchange, release or non-perfection of any security interest in any Collateral, or any release or amendment or waiver of or consent to departure from any other guaranty, for all or any of the Secured Obligations;

(v) any failure on the part of Agent or any other Person to exercise, or any delay in exercising, any right under any Loan Document; and

(vi) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Borrower, any Guarantor or any other guarantor with respect to the Secured Obligations (including, without limitation, all defenses based on suretyship or impairment of collateral, and all defenses that Borrower may assert to the repayment of the Secured Obligations, including, without limitation, failure of consideration, breach of warranty, payment, statute of frauds, bankruptcy, lack of legal capacity, lender liability, accord and satisfaction, and usury), this Agreement and the obligations of Guarantor under this Agreement, other than Payment in Full of the Guarantor Obligations.

(b) Each Guarantor hereby agrees that if Borrower or any other guarantor of all or a portion of the Secured Obligations is the subject of a bankruptcy or insolvency case under applicable law, it will not assert the pendency of such case or any order entered therein as a defense to the timely payment of the Secured Obligations. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Secured Obligations and notice of or proof of reliance by Agent or any Lender upon the guarantee contained in this Section 2 or acceptance of the guarantee contained in this Section 2;

the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section 2, and all dealings between Borrower and any of the Guarantors, on the one hand, and Agent and Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 2. Each Guarantor waives (i) diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon Borrower or any of the Guarantors with respect to the Secured Obligations; (ii) notice of the existence or creation or renewal or non-payment of all or any of the Secured Obligations; (iii) all diligence in collection or protection of or realization upon any Secured Obligations or any security for or guaranty of any Secured Obligations; (iv) any right to require Agent or any Lender, as a condition of payment or performance by Guarantor, to (A) proceed against Borrower, any other guarantor of the Guarantor Obligations or any other Person, (B) proceed against or exhaust any security held from Borrower, any such other guarantor or any other Person, (C) proceed against or have resort to any balance of any deposit account or credit on the books of Agent or any Lender in favor of Borrower or any other Person or (D) pursue any other remedy in the power of Agent or any Lender whatsoever; (v) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower or any other Guarantor including any defense based on or arising out of the lack of validity or the unenforceability of the Guarantor Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Borrower or any other Guarantor from any cause other than Payment in Full of the Guarantor Obligations; (vi) any defense based upon Agent or any Lender's errors or omissions in the administration of the Guarantor Obligations, except errors and omissions resulting from Agent or any Lender's gross negligence, bad faith, or willful misconduct and (vii)(A) any legal or equitable discharge of Guarantor's obligations hereunder and (B) any rights to set-offs, recoupments and counterclaims.

(c) When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings. Each Guarantor agrees that it is not a surety for purposes of any state statutes providing defenses for sureties, and each Guarantor waives any right that it may have under such statutes to assert the applicability thereof to the provisions of this Agreement to require that Agent commence action against Borrower or any other Person or against any of the Collateral.

(d) Agent or any Lender may, from time to time, at its sole discretion and without notice to any Grantor, take any or all of the following actions: (i) retain or obtain a security interest in any property to secure any of the Secured Obligations or any obligation hereunder, (ii) retain or obtain the primary or secondary obligation of any obligor or obligors with respect to any of the Secured Obligations, (iii) extend or renew any of the Secured Obligations for one or more periods (whether or not longer than the original period), alter or exchange any of the Secured Obligations, or release or compromise any obligation of any Guarantor or any obligation of any nature of any other obligor with respect to any of the Secured Obligations, (iv) release any guaranty or right of offset or its security interest in, or surrender, release or permit any substitution or exchange for, all or any part of any property securing any of the Secured Obligations or any obligation hereunder, or extend or renew for one or more periods (whether or

not longer than the original period) or release, compromise, alter or exchange any obligations of any nature of any obligor with respect to any such property, and (v) resort to any Guarantor for payment of any of the Secured Obligations when due, whether or not Agent or such Lender shall have resorted to any property securing any of the Secured Obligations or any obligation hereunder or shall have proceeded against any other Guarantor or any other obligor primarily or secondarily obligated with respect to any of the Secured Obligations.

2.6. Payments. Each Guarantor hereby guarantees that payments hereunder will be paid to Agent without set-off or counterclaim in Dollars at the office of Agent specified in the Credit Agreement.

2.7. Joint and Several Liability of Guarantors

(a) Each Guarantor is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders under this Agreement, for the mutual benefit, directly and indirectly, of each Guarantor and in consideration of the undertakings of the other Guarantors to accept joint and several liability for the Obligations.

(b) Each Guarantor, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Guarantors, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.7), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Guarantor without preferences or distinction among them.

(c) If and to the extent that any Guarantor shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Guarantors will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are paid in full.

(d) The Obligations of each Guarantor under the provisions of this Section 2.7 constitute the absolute and unconditional, full recourse Obligations of each Guarantor enforceable against each Guarantor to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever, except as enforceability may be limited by bankruptcy, insolvency, fraudulent conveyance or similar laws affecting creditors' rights generally and general principles of equity (regardless of whether the application of such principles is considered in a proceeding in equity or at law).

(e) Except as otherwise expressly provided in this Agreement, each Guarantor hereby waives, to the fullest extent permitted by applicable law, notice of acceptance of its joint and several liability, notice of any borrowing or any disbursement from any escrow account, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the fullest extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Guarantor hereby assents to, and waives, to the extent permitted by law, notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent or the Lenders at any time or times in respect of any default by any Guarantor or any other Loan Party in the performance or satisfaction of any term, covenant, condition or provision of

this Agreement, any and all other indulgences whatsoever by the Administrative Agent or the Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Guarantor or any other Loan Party. Without limiting the generality of the foregoing, each Guarantor assents to any other action or delay in acting or failure to act on the part of the Administrative Agent or any Lender with respect to the failure by any Guarantor or any other Loan Party to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.7 afford grounds for terminating, discharging or relieving any Guarantor, in whole or in part, from any of its Obligations under this Section 2.7, it being the intention of each Guarantor that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Guarantor under this Section 2.7 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Guarantor under this Section 2.7 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to Loan Party or the Administrative Agent or any Lender.

(f) Each Guarantor is obligated to repay the Obligations as a joint and several obligor under this Agreement and the other Loan Documents. To the extent that any Guarantor shall, under this Agreement as a joint and several obligor, repay any of the Obligations constituting Loans made to another Guarantor hereunder or other Obligations incurred directly and primarily by any other Guarantor (an "Accommodation Payment"), then the Guarantor making such Accommodation Payment shall be entitled to contribution and indemnification from, and be reimbursed by, each of the other Guarantors in an amount, for each of such other Guarantors, equal to a fraction of such Accommodation Payment, the numerator of which fraction is such other Guarantor's Allocable Amount and the denominator of which is the sum of the Allocable Amounts of all of the Guarantors. As of any date of determination, the "Allocable Amount" of each Guarantor shall be equal to the maximum amount of liability for Accommodation Payments which could be asserted against such Guarantor hereunder without (i) rendering such Guarantor "insolvent" within the meaning of Section 101 (31) of the Bankruptcy Code, Section 2 of the Uniform Fraudulent Transfer Act or Section 2 of the Uniform Fraudulent Conveyance Act, (ii) leaving such Guarantor with unreasonably small capital or assets, within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act, or (iii) leaving such Guarantor unable to pay its debts as they become due within the meaning of Section 548 of the Bankruptcy Code, Section 4 of the Uniform Fraudulent Transfer Act or Section 5 of the Uniform Fraudulent Conveyance Act. All rights and claims of contribution, indemnification, and reimbursement under this Section 2.7(f) shall be subordinate in right of payment to the prior indefeasible Payment in Full of the Obligations. The provisions of this Section 2.7(f) shall, to the extent inconsistent with any provision in any Loan Document, supersede such inconsistent provision.

(g) Each Guarantor represents and warrants to the Administrative Agent and the Lenders that as of the date hereof such Guarantor is currently informed of the financial condition of each Loan Party and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Guarantor further represents and warrants to the Administrative Agent and the Lenders that such Guarantor has read and understands the terms and conditions of the Loan Documents. Each Guarantor hereby covenants that such Guarantor will continue to keep informed of Guarantors' financial condition, and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(h) The provisions of this Section 2.7 are made for the benefit of the Administrative Agent, the Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Guarantors as often as occasion therefor may arise and without requirement on the part of the Administrative Agent, such Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any Guarantor or to exhaust any remedies available to it or them against any Guarantor or any other Loan Party or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.7 shall remain in effect until all of the Obligations shall have been Paid in Full. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Guarantor, or otherwise, the provisions of this Section 2.7 will forthwith be reinstated in effect, as though such payment had not been made.

(i) Each Guarantor hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Guarantor with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to the Administrative Agent or the Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full. Any claim which any Guarantor may have against any other Guarantor with respect to any payments to the Administrative Agent or any Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior Payment in Full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Guarantor, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Guarantor therefor.

(j) Each Guarantor hereby agrees that, after the occurrence and during the continuance of any Event of Default, the payment of any amounts due with respect to the indebtedness owing by any Guarantor to any other Guarantor is hereby subordinated to the prior Payment in Full in cash of the Obligations. Each Guarantor hereby agrees that after the occurrence and during the continuance of any Event of Default, such Guarantor will not demand, sue for or otherwise attempt to collect any indebtedness of any other Guarantor owing to such Guarantor until the Obligations shall have been paid in full. If, notwithstanding the foregoing sentence, such Guarantor shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Guarantor in trust for the Administrative Agent, and such Guarantor shall deliver any such amounts to the Administrative Agent for application to the Obligations in accordance with Section 7.2 of the Credit Agreement.

### **3. Grant of Security Interest.**

(a) Each Grantor hereby assigns and transfers to Agent, and hereby grants to Agent, for the ratable benefit of Lenders and (to the extent provided herein) their Affiliates, a security interest in all of the following (if applicable):

(i) all of each Grantor's right, title and interest in and to all of such Grantor's assets, including any and all personal property, Accounts, Chattel Paper (including Electronic Chattel Paper), Deposit Accounts, Documents, Equipment, Farm Products, Fixtures, General Intangibles, Goods, Health-Care-Insurance Receivables, Instruments, FC2 Intellectual Property, Inventory, Investment Property, Letter-of-Credit Rights, Software, Money, Supporting Obligations, and Identified Claims, in each case whether now owned or at any time hereafter acquired or arising,

(ii) all books and records pertaining to any of the foregoing,



(iii) all Proceeds and products of any of the foregoing, and

(iv) all collateral security and guarantees given by any Person with respect to any of the foregoing,

in each case, solely to the extent such assets relate to or arise from the FC2 Product (all of the foregoing, collectively, the "Collateral"), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations; provided, that the Collateral shall not include the Excluded Property.

(b) Each Grantor shall promptly notify Agent of any Commercial Tort Claims relating to or arising from the FC2 Product in which such Grantor has an interest arising after the Closing Date and shall provide all necessary information concerning each such Commercial Tort Claim and make all necessary filings with respect thereto to perfect Agent's first-priority security interest (subject to Permitted Liens) therein.

(c) Each Grantor has full right and power to grant to Agent, for the benefit of Agent and Lenders, a perfected, first-priority security interest (subject to Permitted Liens) and Lien on the Collateral pursuant to this Agreement, subject to no transfer or other restrictions or Liens of any kind in favor of any other Person (other than Permitted Liens). Except with respect to any financing statement (i) securing debt to be paid off as of the Closing Date, (ii) securing Permitted Liens, or (iii) filed on behalf of Agent, no financing statement relating to any of the Collateral is on file in any public office. No Grantor is party to any agreement, document or instruction that conflicts with this Section 3.

(d) Each Grantor hereby authorizes Agent to prepare and file financing statements provided for by the Code, or any similar law in any other jurisdiction, and to take such other action as may be required, in Agent's sole discretion, to perfect and to continue the perfection of Agent's security interest in the Collateral.

(e) Irrespective of any provision in this Agreement, the prior consent of Agent shall not be required in connection with the licensing or sublicensing of FC2 Intellectual Property pursuant to collaborations, licenses or other strategic transactions with third parties ("Permitted Licenses") executed in the normal course of Borrower's business and excluding, for the avoidance of doubt, any exclusive license or sublicense.

#### **4. Representations and Warranties.**

To induce Agent and Lenders to enter into the Credit Agreement and to induce Lenders to make their respective extensions of credit to Borrower thereunder, each Grantor jointly and severally hereby represents and warrants to Agent and each Lender that:

4.1. Title; No Other Liens. Except for Permitted Liens, the Grantors own each item of the Collateral, tangible and intangible, of any nature whatsoever that they purport to own free and clear of any and all Liens or claims of others (including, to the best knowledge of Grantors, infringement claims with respect to FC2 Intellectual Property). As of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), no financing statement or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except filings evidencing Permitted Liens and filings for which termination statements have been delivered to Agent.

4.2. Perfected First Priority Liens. Each Grantor has full right and power to grant to Agent the security interests contemplated herein, and the security interests granted pursuant to this Agreement are prior and senior to all other Liens on the Collateral in existence on the date hereof except for Permitted Liens expressly permitted by the Credit Agreement.

---

4.3. Grantor Information. Schedule 2 sets forth, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) each Grantor's jurisdiction of organization, (b) the location of each Grantor's chief executive office, (c) each Grantor's exact legal name as it appears on its organizational documents, (d) each Grantor's federal business or tax identification number, and (e) each Grantor's organizational identification number.

4.4. Collateral Locations. Schedule 3 sets forth, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), (a) each place of business of each Grantor (including its chief executive office), (b) all locations where all Inventory and the Equipment owned by each Grantor is kept, and (c) whether each such Collateral location and place of business (including each Grantor's chief executive office) is owned or leased (and if leased, specifies the complete name and notice address of each lessor as set forth in the relevant lease). No Collateral is located outside the United States or in the possession of any lessor, bailee, warehouseman or consignee, except as indicated on Schedule 3.

4.5. Certain Property. Except as set forth on Schedule 8, none of the Collateral constitutes, or is the Proceeds of, (a) Farm Products, (b) Health-Care-Insurance Receivables or (c) vessels, aircraft or any other property subject to any certificate of title or other registration statute of the United States, any state or other jurisdiction, except for personal vehicles owned by the Grantors and used by employees of the Grantors in the ordinary course of business.

4.6. Investment Property.

(a) The shares of Pledged Equity pledged by each Grantor hereunder constitute all the issued and outstanding equity interests of each Issuer owned by such Grantor other than Equity Interests constituting Excluded Property.

(b) All of the Pledged Equity issued by a Subsidiary of the Grantor has been duly and validly issued and is fully paid and nonassessable.

(c) Each of the Intercompany Notes (if any) constitutes the legal, valid and binding obligation of the obligor with respect thereto, enforceable in accordance with its terms (subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing).

(d) Schedule 1 lists all Investment Property owned by each Grantor as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor). Each Grantor is the record and beneficial owner of the Investment Property pledged by it hereunder that it purports to own, free of any and all Liens or options in favor of, or claims of, any other Person, except the security interest created by this Agreement and for Permitted Liens.

4.7. Receivables.

(a) No amount payable to such Grantor under or in connection with any Receivable is evidenced by any Instrument or Chattel Paper which has not been delivered to Agent.

(b) The amounts represented by such Grantor to Lenders from time to time as owing to such Grantor in respect of the Receivables (to the extent such representations are required by any of the Loan Documents) will at all such times be accurate in all material respects, subject to the inability to collect Receivables in the ordinary course of business.

4.8. Intellectual Property.

(a) Schedule 4 lists all Registered Intellectual Property owned or leased by each Grantor in its own name (or a former name) related to the FC2 Product on the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor).

(b) On the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), all FC2 Intellectual Property owned by any Grantor is valid, subsisting, unexpired and enforceable, has not been abandoned and, to such Grantor's knowledge, does not infringe on the intellectual property rights of any other Person.

(c) Except as set forth in Schedule 4, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), none of the FC2 Intellectual Property owned by a Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor.

(d) Except as set forth in Schedule 4, no holding, decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or any Grantor's rights in, any FC2 Intellectual Property owned by any Grantor.

(e) Except as set forth in Schedule 4, no action or proceeding is pending, or, to the knowledge of such Grantor, is threatened, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor) (i) seeking to limit, cancel or question the validity of any FC2 Intellectual Property or any Grantor's interest therein, or (ii) which, if adversely determined, would materially and adversely affect the value of any FC2 Intellectual Property.

(f) Each Grantor owns and possesses or has a license or other right to use the FC2 Intellectual Property as is necessary for the conduct of the businesses of such Grantor as currently conducted, and to such Grantor's knowledge, without any infringement upon the rights of others.

4.9. Deposit Accounts and Other Accounts. All Deposit Accounts and all other bank accounts, securities accounts and other accounts maintained by each Grantor as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), are described on Schedule 5 hereto, which description includes for each such account the name of the Grantor maintaining such account, the name, address, telephone and fax numbers of the financial institution at which such account is maintained, and the account number and the account officer, if any, of such account, and whether such account is an Exempt Account.

4.10. Excluded Property. Except as set forth in Schedule 7, each Grantor represents, warrants and covenants that it does not, as of the Closing Date (or the date such Grantor joins this Agreement as it relates to such Grantor), own any Excluded Property, which by itself is, and/or when aggregated, are material to the business of such Grantor, other than Equity Interests in Subsidiaries constituting Excluded Property.

## 5. Covenants.

Each Grantor covenants and agrees with Agent and Lenders that, from and after the date of this Agreement until the Secured Obligations shall have been Paid in Full:

5.1. Delivery of Instruments, Certificated Securities and Chattel Paper. If any amount payable under or in connection with any of the Collateral in excess of \$100,000 shall be or become evidenced by any Instrument (other than, for greater certainty, a license agreement), Certificated Security or Chattel Paper, such Instrument, Certificated Security or Chattel Paper shall be promptly delivered to Agent, duly indorsed in a manner reasonably satisfactory to Agent, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Agent to have control thereof within the meaning set forth in Section 9-105 of the Code. In the event that an Event of Default shall have occurred and be continuing, upon the request of Agent, any Instrument, Certificated Security or Chattel Paper not theretofore delivered to Agent and at such time being held by any Grantor shall be immediately delivered to Agent, duly indorsed in a manner satisfactory to Agent, to be held as Collateral pursuant to this Agreement and in the case of Electronic Chattel Paper, the applicable Grantor shall cause Agent to have control thereof within the meaning set forth in Section 9-105 of the Code.

### 5.2. Maintenance of Perfected Security Interest; Further Documentation

(a) Except as expressly permitted by this Agreement or the Credit Agreement, such Grantor shall maintain the security interest created by this Agreement as a perfected security interest having at least the priority described in Section 4.2 and shall defend such security interest against the claims and demands of all Persons whomsoever, provided that, unless otherwise required by Agent in writing at any time following the occurrence and continuance of an Event of Default, such security interest need not be perfected in property of the Grantor in which a security interest may not be perfected by filing a financing statement under the Code, having a value less than \$100,000 individually or \$350,000 in the aggregate.

(b) Such Grantor will furnish to Agent and Lenders from time to time statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as Agent may reasonably request, all in reasonable detail.

(c) At any time and from time to time, upon the reasonable written request of Agent, and at the sole expense of such Grantor, such Grantor will promptly and duly execute and deliver, and have recorded, such further instruments and documents and take such further actions as Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including (i) filing any financing or continuation statements under the Code (or other similar laws) in effect in any jurisdiction with respect to the security interests created hereby, (ii) in the case of Investment Property, Deposit Accounts, Electronic Chattel Paper and Letter of Credit Rights and any other relevant Collateral, taking any actions necessary to enable Agent to obtain "control" (within the meaning of Code) with respect thereto, in each case pursuant to documents in form and substance reasonably satisfactory to Agent, provided that so long as no Event of Default has occurred and is continuing, no Grantor shall be required to cause the Agent to have control over such Investment Property, Electronic Chattel Paper, Letter of Credit Rights or other relevant Collateral (other than any Deposit Account) having a value less than \$100,000 individually or \$350,000 in the aggregate and (iii) during the continuance of an Event of Default, if requested by Agent, delivering, to the extent permitted by law, any original motor vehicle certificates of title received by such Grantor from the applicable secretary of state or other Governmental Authority after information reflecting Agent's security interest has been recorded therein.

(d) Such Grantor authorizes Agent to, at any time and from time to time, at such Grantor's expense, file financing statements, continuation statements, and amendments thereto that describe the Collateral (including describing the Collateral as "all assets" of each Grantor, or words of similar effect), and which contain any other information required pursuant to the Code for the sufficiency of the applicable filing office acceptance of any financing statement, continuation statement, or amendment, and each Grantor agrees to furnish any such information to Agent promptly upon request. Any such financing statement, continuation statement, or amendment may be signed (to the extent signature of a Grantor is required under applicable law) by Agent on behalf of any Grantor and may be filed at any time in any applicable jurisdiction.

(e) Such Grantor shall, at any time and from time to time, take such steps as Agent may reasonably request (i) to obtain an acknowledgement, in form and substance reasonably satisfactory to Agent, of any bailee having possession of any of the Collateral (provided that such Grantor shall not be required to obtain any such acknowledgement as it relates to Collateral having a value less than \$100,000 individually or \$350,000 in the aggregate unless otherwise required by Agent in writing at any time following the occurrence and continuance of an Event of Default), stating that the bailee holds such Collateral for Agent, (ii) to obtain "control" of any Letter-of-Credit Rights, or Electronic Chattel Paper (within the meaning of the Code) with any agreements establishing control to be in form and substance reasonably satisfactory to Agent (provided that such Grantor shall not be required to ensure Agent has "control" over any such Collateral described in this clause (ii) having a value less than \$100,000 individually or \$350,000 in the aggregate unless otherwise required by Agent in writing at any time following the occurrence and continuance of an Event of Default) and (iii) otherwise to ensure the continued perfection and priority of Agent's security interest in any of the Collateral and of the preservation of its rights therein to the extent required by this Agreement and the Credit Agreement.

(f) Without limiting the generality of the foregoing, if such Grantor at any time holds or acquires an interest in any Electronic Chattel Paper or any "transferable record", as that term is defined in Section 201 of the federal Electronic Signatures in Global and National Commerce Act, or in §16 of the Uniform Electronic Transactions Act as in effect in any relevant jurisdiction, such Grantor shall promptly notify Agent thereof and, at the request of Agent, shall take such action as Agent may reasonably request to vest in Agent "control" under Section 9-105 of the Code of such electronic chattel paper or control under Section 201 of the federal Electronic Signatures in Global and National Commerce Act or, as the case may be, §16 of the Uniform Electronic Transactions Act, as so in effect in such jurisdiction, of such transferable record. Agent agrees with the Grantors that Agent will arrange, pursuant to procedures reasonably satisfactory to Agent and so long as such procedures will not result in Agent's loss of control, for the Grantors to make alterations to such electronic chattel paper or transferable record permitted under Section 9-105 of the Code or, as the case may be, Section 201 of the federal Electronic Signatures in Global and National Commerce Act or §16 of the Uniform Electronic Transactions Act for a party in control to make without loss of control, unless an Event of Default has occurred and is continuing or would occur after taking into account any action by any Grantor with respect to such electronic chattel paper or transferable record.

5.3. Changes in Locations, Name, etc. Except as permitted by the Credit Agreement, each Grantor shall not, except upon 30 days' prior written notice to Agent and delivery to Agent of (a) all additional financing statements and other documents reasonably requested by Agent as to the validity, perfection and priority of the security interests provided for herein and (b) if applicable, a written supplement to Schedule 3 showing any additional location at which Inventory or Equipment having a fair market value greater than \$100,000 at any single location shall be kept:

(i) permit any of the Inventory or Equipment to be kept at a location other than those listed on Schedule 3; provided, that up to \$250,000 in fair market value of any such Inventory and Equipment may be kept at other individual locations;

(ii) change the location of its chief executive office from that specified on Schedule 2 or in any subsequent notice delivered pursuant to this Section 5.3; or

(iii) change its name, identity, corporate structure (including without limitation, the merger into or with any other Person) or its jurisdiction of organization.

5.4. Notices. Such Grantor will advise Agent and Lenders promptly, in reasonable detail, of:

(a) any Lien (other than Permitted Liens) on any of the Collateral; and

(b) the occurrence of any other event which could reasonably be expected to have a Material Adverse Effect on the aggregate value of the Collateral or on the Liens created hereby.

5.5. Investment Property.

(a) If such Grantor shall become entitled to receive or shall receive any certificate, option or rights in respect of the equity interests of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any of the Pledged Equity, or otherwise in respect thereof, such Grantor shall accept the same as the agent of Agent and Lenders, hold the same in trust for the benefit of the Agent and Lenders and deliver the same forthwith to Agent in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required, together with an undated instrument of transfer covering such certificate duly executed in blank by such Grantor and with, if Agent so reasonably requests, signature guaranteed, to be held by Agent, subject to the terms hereof, as additional Collateral for the Secured Obligations. Upon the occurrence and during the continuance of an Event of Default, (i) any sums paid upon or in respect of the Investment Property upon the liquidation or dissolution of any Issuer shall be paid over to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5, and (ii) in case any distribution of capital shall be made on or in respect of the Investment Property or any property shall be distributed upon or with respect to the Investment Property pursuant to the recapitalization or reclassification of the capital of any Issuer or pursuant to the reorganization thereof, the property so distributed shall, unless otherwise subject to a perfected Lien in favor of Agent, be delivered to Agent to be held, at Agent's option, either by it hereunder as additional Collateral for the Secured Obligations or applied to the Secured Obligations as provided in Section 6.5. Upon the occurrence and during the continuance of an Event of Default, if any sums of money or property so paid or distributed in respect of the Investment Property shall be received by such Grantor, such Grantor shall, until such money or property is paid or delivered to Agent, hold such money or property in trust for Lenders, segregated from other funds of such Grantor, as additional Collateral for the Secured Obligations.

(b) Without the prior written consent of Agent, such Grantor will not, so long as an Event of Default has occurred and is continuing and to the extent permitted by the Credit Agreement, (i) vote to enable, or take any other action to permit, any Issuer to issue any equity interests of any nature or to issue any other securities or interests convertible into or granting the right to purchase or exchange for any equity interests of any nature of any Issuer, (ii) sell, assign, transfer, exchange, or otherwise dispose of, or grant any option with respect to, the Investment Property or Proceeds thereof (except pursuant to a transaction expressly permitted by the Credit Agreement) other than, with respect to Investment Property

not constituting Pledged Equity or Pledged Notes, and such action which is not prohibited by the Credit Agreement, (iii) create, incur or permit to exist any Lien or option in favor of, or any claim of any Person with respect to, any of the Investment Property or Proceeds thereof, or any interest therein, except for Permitted Liens, or (iv) enter into any agreement or undertaking restricting the right or ability of such Grantor or Agent to sell, assign or transfer any of the Investment Property or Proceeds thereof, except, with respect to such Investment Property, shareholders' agreements entered into by such Grantor with respect to Persons in which such Grantor maintains an ownership interest of 50% or less.

(c) In the case of each Grantor which is an Issuer, such Issuer agrees that (i) it will be bound by the terms of this Agreement relating to the Investment Property issued by it and will comply with such terms insofar as such terms are applicable to it, (ii) it will notify Agent promptly in writing of the occurrence of any of the events described in Section 5.5(a) with respect to the Investment Property issued by it and (iii) the terms of Sections 6.3(c) shall apply to such Grantor with respect to all actions that may be required of it pursuant to Section 6.3(c) regarding the Investment Property issued by it.

#### 5.6. Receivables.

(a) Other than in the ordinary course of business, without the prior written consent of Agent, such Grantor will not (i) grant any extension of the time of payment of any Receivable, (ii) compromise or settle any Receivable for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Receivable, (iv) allow any credit or discount whatsoever on any Receivable or (v) amend, supplement or modify any Receivable in any manner that could materially adversely affect the value thereof, to the extent that any action in clauses (i)—(iv) above could reasonably be expected to have a Material Adverse Effect.

(b) Such Grantor will deliver to Agent a copy of each material demand, notice or document received by it that questions or calls into doubt the validity or enforceability of more than 5% of the aggregate amount of the then outstanding Receivables for all Grantors.

#### 5.7. FC2 Intellectual Property.

(a) Such Grantor (either itself or through licensees) will (i) continue to use each Trademark as currently used, in order to maintain such Trademark free from any claim of abandonment for non-use, (ii) maintain as in the past the quality of products and services offered under such Trademark, (iii) use such Trademark with the appropriate notice of registration and all other notices and legends required by applicable law, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless Agent, for the ratable benefit of Lenders, shall obtain a perfected security interest in such mark pursuant to this Agreement and the IP Security Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark may become invalidated or impaired in any way, to the extent that any action in clauses (i)—(v) could reasonably be expected to have a Material Adverse Effect, provided that upon obtaining Agent's prior written consent, Grantor may in the ordinary course of its business cease the use of a Trademark.

(b) Such Grantor (either itself or through licensees) will not do any act, or omit to do any act, whereby any Patent may become forfeited, abandoned or dedicated to the public, to the extent such act or omission could reasonably be expected to have a Material Adverse Effect.

(c) Such Grantor (either itself or through licensees) (i) will employ each Copyright and (ii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any material portion of any Copyrights may become invalidated or otherwise impaired and which could reasonably be expected to have a Material Adverse Effect. Such Grantor will not (either itself or through licensees) do any act whereby any material portion of any Copyrights may fall into the public domain and which could reasonably be expected to have a Material Adverse Effect.

(d) Such Grantor (either itself or through licensees) will not do any act that knowingly uses any FC2 Intellectual Property to infringe the intellectual property rights of any other Person.

(e) Such Grantor will notify Agent and Lenders promptly if it knows, or has reason to know, that any application or registration relating to any FC2 Intellectual Property may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office, or any court or tribunal in any country) regarding, such Grantor's ownership of, or the validity of, any FC2 Intellectual Property or such Grantor's right to register the same or to own and maintain the same, except to the extent that such forfeiture, abandonment or dedication, or adverse determination or development would not reasonably be expected to have a Material Adverse Effect.

(f) Whenever such Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any FC2 Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office, or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to Agent concurrently with the next delivery of financial statements of Parent and its Subsidiaries pursuant to Section 6.1.1 or 6.1.2 of the Credit Agreement, as applicable. Upon the request of Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as Agent may reasonably request to evidence Agent's and Lenders' security interest in any Copyright, Patent or Trademark and the goodwill and general intangibles of such Grantor relating thereto or represented thereby.

(g) Such Grantor will take all reasonable and necessary steps to maintain and pursue each application referred to in Section 5.7(f), (and to obtain the relevant registration), except to the extent the failure to maintain and pursue such application would not reasonably be expected to have a Material Adverse Effect, and to maintain each registration of all FC2 Intellectual Property owned by it, except to the extent that the failure to maintain registration of all FC2 Intellectual Property owned by it would not reasonably be expected to have a Material Adverse Effect.

(h) In the event that any FC2 Intellectual Property is infringed upon or misappropriated or diluted by a third party, such Grantor shall (i) take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such FC2 Intellectual Property and (ii) if such FC2 Intellectual Property is of material economic value, promptly notify Agent after it learns thereof and, to the extent, in its reasonable judgment, such Grantor determines it appropriate under the circumstances, sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.

5.8. Deposit Accounts and Other Accounts. Such Grantor hereby authorizes the financial institutions at which such Grantor maintains a Deposit Account, other bank account, securities account or other account to provide Agent with such information with respect to such account as Agent may from time to time reasonably request, and each Grantor hereby consents to such information being provided to Agent. Such Grantor will cause each financial institution at which such Grantor maintains a Deposit Account or other account to enter into a control agreement or other similar agreement with Agent and such Grantor, in form and substance reasonably satisfactory to Agent, in order to give Agent "control" (within the meaning set forth in Section 9-104 of the Code) of such account, except for Exempt Accounts.



5.9. Other Matters. Such Grantor shall cause to be delivered to Agent, at Agent's request, a Collateral Access Agreement with respect to (a) each bailee with which such Grantor keeps Inventory or other assets as of the Closing Date having a value in excess of \$250,000 and (b) each landlord which leases real property (and the accompanying facilities) to such Grantor as of the Closing Date at which it maintains its chief executive office or a substantial amount of its books or records. If such Grantor shall (x) cause to be delivered Inventory or other property having a value in excess of \$250,000 to any bailee after the Closing Date, such Grantor shall on or prior to such delivery cause such bailee to sign a Collateral Access Agreement or (y) enter into any lease for real property after the Closing Date at which it maintains its chief executive office or a substantial amount of its books and records, such Grantor shall on or prior to the first day of the term of such lease cause the landlord to sign a Collateral Access Agreement.

5.10. Commercial Tort Claims. If such Grantor shall at any time acquire any Commercial Tort Claim relating to the FC2 Product, such Grantor shall promptly notify Agent thereof in writing, therein providing a reasonable description and summary thereof, and upon delivery thereof to Agent, such Grantor shall be deemed to thereby grant to Agent (and such Grantor hereby grants to Agent) a security interest in such Commercial Tort Claim and all proceeds thereof, and such Grantor shall execute such documentation as Agent shall require in order to document and effectuate such grant of a security interest.

## **6. Remedial Provisions.**

### **6.1. Certain Matters Relating to Receivables**

(a) At any time and from time to time after the occurrence and during the continuance of an Event of Default, Agent shall have the right to make test verifications of the Receivables in any manner and through any medium that it reasonably considers advisable, and each Grantor shall furnish all such assistance and information Agent may reasonably require in connection with such test verifications. At any time and from time to time after the occurrence and during the continuance of an Event of Default, upon Agent's reasonable request and at the expense of the relevant Grantor, such Grantor shall cause independent public accountants or others reasonably satisfactory to Agent to furnish to Agent reports showing reconciliations, agings and test verifications of, and trial balances for, the Receivables.

(b) If required by Agent at any time after the occurrence and during the continuance of an Event of Default, any payments of Receivables, when collected or received by or on behalf of any Grantor, (i) shall be forthwith (and, in any event, within 2 Business Days) deposited by such Grantor in the exact form received, duly indorsed (but without any representation or warranty) by such Grantor to Agent if required, in a collateral account maintained under the sole dominion and control of Agent, for application to the Secured Obligations in accordance with Section 6.5, and (ii) until so turned over, shall be held by such Grantor in trust for Agent and Lenders, segregated from other funds of such Grantor. In connection with each such deposit of Proceeds of Receivables such Grantor shall deliver to Agent a report identifying in reasonable detail the nature and source of the payments included in the deposit.

(c) At any time and from time to time after the occurrence and during the continuance of an Event of Default, at Agent's request, each Grantor shall deliver to Agent all original and other documents evidencing, and relating to, the agreements and transactions which gave rise to the Receivables, including all original orders, invoices and shipping receipts.

---

## 6.2. Communications with Obligors: Grantors Remain Liable

(a) Agent in its own name or in the name of others may at any time after the occurrence and during the continuance of an Event of Default communicate with obligors under the Receivables to verify with them to Agent's reasonable satisfaction the existence, amount and terms of any Receivables.

(b) Upon the request of Agent at any time after the occurrence and during the continuance of an Event of Default, each Grantor shall notify obligors on the Receivables that the Receivables have been assigned to Agent for the ratable benefit of Lenders and that payments in respect thereof shall be made directly to Agent.

(c) Anything herein to the contrary notwithstanding, each Grantor shall remain liable in respect of each of the Receivables 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 thereto. Neither Agent nor any Lender shall have any obligation or liability under any Receivable (or any agreement giving rise thereto) by reason of or arising out of this Agreement or the receipt by Agent or any Lender of any payment relating thereto, nor shall Agent or any Lender be obligated in any manner to perform any of the obligations of any Grantor under or pursuant to any Receivable (or any agreement giving rise thereto), to make any payment, 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 thereunder, 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 assigned to it or to which it may be entitled at any time or times.

(d) For the purpose of enabling Agent to exercise rights and remedies under this Agreement, each Grantor hereby grants to Agent, for the benefit of Agent and Lenders, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor) to use, license or sublicense any FC2 Intellectual Property that constitutes part of the Collateral now owned or hereafter acquired by such Grantor, to the extent such FC2 Intellectual Property may be so licensed or sublicensed, and wherever the same may be located, 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.

## 6.3. Investment Property.

(a) Unless an Event of Default shall have occurred and be continuing and Agent shall have given notice to the relevant Grantor of Agent's intent to exercise its corresponding rights pursuant to Section 6.3(b), each Grantor shall be permitted to receive all cash dividends and distributions, payments and Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property that constitutes Collateral, to the extent permitted in the Credit Agreement, and to exercise all voting and other rights and any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Pledged Equity, Pledged Notes and Investment Property (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by such Grantor of any right, privilege or option pertaining to such Pledged Equity, Pledged Notes or Investment Property, and in connection therewith, the right to deposit and deliver any and all of such Pledged Equity, Pledged Notes and Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as such Grantor may determine); provided, that no vote shall be cast or other right exercised or action taken which would be inconsistent with or result in any violation of any provision of the Credit Agreement, this Agreement or any other Loan Document.

(b) If an Event of Default shall occur and be continuing, upon notice to the relevant Grantor, Agent shall have the right to (i) receive any and all cash dividends and distributions, payments or other Proceeds paid in respect of the Pledged Equity, the Pledged Notes and all other Investment Property and make application thereof to the Secured Obligations in accordance with Section 6.5, (ii) register any or all of the Investment Property in the name of Agent or its nominee, (iii) exercise, or permit its nominee to exercise, all voting and other rights pertaining to such Investment Property, and (iv) exercise, or permit its nominee to exercise, any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property as if it were the absolute owner thereof (including the right to exchange at its discretion any and all of the Investment Property upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate or other structure of any Issuer, or upon the exercise by any Grantor or Agent of any right, privilege or option pertaining to such Investment Property, and in connection therewith, the right to deposit and deliver any and all of the Investment Property with any committee, depository, transfer agent, registrar or other designated agency upon such terms and conditions as Agent may determine), all without liability except to account for property actually received by it, but Agent shall have no duty to exercise any such right, privilege or option and shall not be responsible for any failure to do so or delay in so doing.

(c) Each Grantor hereby authorizes and instructs each Issuer of any Investment Property pledged by such Grantor hereunder to (i) comply with any instruction received by it from Agent in writing that (x) states that an Event of Default has occurred and is continuing and (y) is otherwise in accordance with the terms of this Agreement and the Credit Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying, and (ii) unless otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to the Investment Property directly to Agent.

6.4. Proceeds to be Turned Over To Agent. In addition to the rights of Agent specified in Section 6.1 with respect to payments of Receivables, if an Event of Default shall occur and be continuing, all such Proceeds of Collateral received by or on behalf of any Grantor consisting of cash, checks and other cash equivalent items shall be held by such Grantor in trust for Agent and Lenders, segregated from other funds of such Grantor, and shall, at the written request of Agent, forthwith upon receipt by such Grantor, be turned over to Agent in the exact form received by such Grantor (duly indorsed (but without any representation or warranty) by such Grantor to Agent, if required). All Proceeds received by Agent hereunder shall be applied to the Secured Obligations as provided in Section 6.5.

6.5. Application of Proceeds. If an Event of Default shall have occurred and be continuing, Agent shall apply all or any part of Proceeds held in any collateral account established pursuant hereto or otherwise received by Agent to the payment of the Secured Obligations in a manner that is consistent with the provisions of Section 2.10.2 of the Credit Agreement.

6.6. Code and Other Remedies. If an Event of Default shall occur and be continuing, Agent, on behalf of Lenders, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the Code, or any other applicable foreign or domestic law. Without limiting the generality of the foregoing, if an Event of Default shall occur or be continuing, Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at

public or private sale or sales, at any exchange, broker's board or office of Agent or any Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery with assumption of any credit risk. Agent may disclaim any warranties that might arise in connection with any such lease, assignment, grant of option or other disposition of Collateral and have no obligation to provide any warranties at such time. Agent or any Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor, which right or equity is hereby waived and released. Such sales may be adjourned and continued from time to time with or without notice. Agent shall have the right to conduct such sales on any Grantor's premises or elsewhere and shall have the right to use any Grantor's premises without charge for such time or times as Agent deems necessary or advisable. Each Grantor further agrees after an Event of Default has occurred and is continuing, at Agent's request, to assemble the Collateral and make it available to Agent at places which Agent shall reasonably select, whether at such Grantor's premises or elsewhere. Agent shall apply the net proceeds of any action taken by it pursuant to this Section 6.6, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Agent and Lenders hereunder, including reasonable attorneys' fees and disbursements, to the payment of the Secured Obligations in a manner that is consistent with the provisions of Section 2.10.2 of the Credit Agreement. To the extent permitted by applicable law, each Grantor waives all claims, damages and demands it may acquire against Agent or any Lender arising out of the exercise by them of any rights hereunder, except to the extent such claims, damages or demands arise from the gross negligence, willful misconduct or bad faith of the Agent or Lenders. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper so long as (a) it is given at least 15 days before such sale or other disposition, and (b) contains such information as may be prescribed by applicable law.

6.7. Pledged Equity. Each Grantor recognizes that Agent may be unable to effect a public sale of any or all the Pledged Equity, by reason of certain prohibitions contained in the Securities Act and other applicable securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers which will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. Agent shall be under no obligation to delay a sale of any of the Pledged Equity for the period of time necessary to permit the Issuer thereof to register such securities or other interests for public sale under the Securities Act, or other applicable state securities laws, even if such Issuer would agree to do so.

6.8. Deficiency. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient for the Secured Obligations to be Paid in Full and the fees and disbursements of any attorneys employed by Agent or any Lender to collect such deficiency.

6.9. Permitted Licenses. Agent hereby covenants and agrees that in connection with any foreclosure or other exercise of Agent's rights with respect to Permitted Licenses, Agent shall not terminate, limit, or otherwise adversely affect the rights of the licensees or sublicensees under such Permitted Licenses, so long as such licensee or sublicensee is not then otherwise in default under the applicable Permitted License in a way that would permit the applicable licensor to terminate such Permitted License.

6.10. Protective Advances. Notwithstanding any provision of any Loan Document, Agent, in its sole discretion shall have the right, but not any obligation, at any time that Grantors fail to do so, subject to any applicable cure periods permitted by or otherwise set forth in the Loan Documents, and from time to time, without prior notice (except as expressly required under the Loan Documents), to: (i) discharge (at Borrower's expense) taxes or Liens affecting any of the Collateral that have not been paid in violation of any Loan Document or that jeopardize Agent's Lien priority in the Collateral; or (ii) make any other payment (at Borrower's expense) for the administration, servicing, maintenance, preservation or protection of the Collateral (each such advance or payment set forth in clauses (i) and (ii) herein, a "Protective Advance"). Agent shall be reimbursed for all Protective Advances pursuant to Section 2.9.1(c) and/or Section 2.10 of the Credit Agreement, as applicable, and any Protective Advances shall bear interest at a rate of ten percent (10%) per annum from the date such Protective Advance is paid by Agent until it is repaid. No Protective Advance by Agent shall be construed as a waiver by Agent, or any Lender of any Default, Event of Default or any of the rights or remedies of Agent or any Lender under any Loan Document.

6.11. Actions in Concert. Section 9.12 of the Credit Agreement shall be incorporated herein by reference.

## 7. Agent.

### 7.1. Agent's Appointment as Attorney-in-Fact, etc.

(a) Each Grantor hereby irrevocably constitutes and appoints Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact and proxy with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, following the occurrence and during the continuation of an Event of Default, solely for the purpose of strictly carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives Agent the power and right, on behalf of and at the expense of such Grantor, without notice to or assent by such Grantor, following the occurrence and during the continuation of an Event of Default to do any or all of the following to the extent otherwise expressly permitted by the terms of this Agreement and the Credit Agreement (including the satisfaction of any requirement to give notice to such Grantor prior to doing any of the following):

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse (but without any representation or warranty) and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Receivable or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise reasonably deemed appropriate by Agent for the purpose of collecting any and all such moneys due under any Receivable or with respect to any other Collateral whenever payable;

(ii) in the case of any FC2 Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Agent may reasonably request to evidence Agent's security interest in such FC2 Intellectual Property and the goodwill and general intangibles of such Grantor relating thereto or represented thereby;

(iii) discharge Liens (other than Permitted Liens) levied or placed on or threatened against the Collateral, and effect any repairs or insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in Section 6.6 or 6.7, any indorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to Agent or as Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse (but without any representation or warranty) any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as Agent may deem appropriate; (G) assign any Copyright, Patent or Trademark, throughout the world for such term or terms, on such conditions, and in such manner, as Agent shall in its sole discretion determine; (H) vote any right or interest with respect to any Investment Property; (I) order good standing certificates and conduct lien searches in respect of such jurisdictions or offices as Agent may deem appropriate; and (J) generally sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Agent were the absolute owner thereof for all purposes, and do, at Agent's option and such Grantor's expense, at any time, or from time to time, all acts and things which Agent deems necessary to protect, preserve or realize upon the Collateral and Agent's security interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

(b) THE POWER-OF-ATTORNEY AND PROXY GRANTED HEREBY IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SUCH PROXY SHALL BE EFFECTIVE AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY INVESTMENT PROPERTY ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE INVESTMENT PROPERTY OR ANY OFFICER OR AGENT THEREOF). Each Grantor acknowledges and agrees that in any event such power-of-attorney and proxy is intended to and shall, to the fullest extent permitted by applicable law, be valid and irrevocable until (x) the Secured Obligations have been Paid in Full and (y) Lenders and Agent have no further obligations under the Loan Documents (excluding any obligations under the Residual Royalty Agreement). Such power-of-attorney and proxy shall be valid and irrevocable as provided herein notwithstanding any limitations to the contrary set forth in the charter, bylaws or other organizational documents of the relevant entities.

(c) Upon exercise of the proxy set forth herein, all prior proxies given by any Grantor with respect to any of the Investment Property (other than to Agent or otherwise pursuant to the Loan Documents) are hereby revoked, and until the Secured Obligations are Paid in Full no subsequent proxies (other than to Agent or otherwise under the Loan Documents) will be given with respect to any of the Investment Property. To the extent permitted by this Agreement, Agent, as proxy, will be empowered and may exercise the irrevocable proxy to vote the Investment Property at any and all times, including but not limited to, at any meeting of shareholders, partners or members, as the case may be, however called, and at any adjournment thereof, or in any action by written consent, and may waive any notice otherwise required in connection therewith. To the fullest extent permitted by applicable law, Agent shall have no agency, fiduciary or other implied duties to any Grantor or any other party when acting in its capacity as

such attorney-in-fact or proxy. Each Grantor hereby waives and releases any claims that it may otherwise have against Agent with respect to any breach or alleged breach of any such agency, fiduciary or other duty, other than claims resulting from the gross negligence, bad faith or willful misconduct of Agent. Notwithstanding the foregoing grant of a power of attorney and proxy, Agent shall have no duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so.

(d) Anything in Section 7.1(a) to the contrary notwithstanding, Agent agrees that it will not exercise any rights under the power of attorney provided for in this Section 7.1 unless an Event of Default shall have occurred and be continuing.

(e) If any Grantor fails to perform or comply with any of its agreements contained herein, Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement at such Grantor's sole cost and expense.

(f) Each Grantor hereby ratifies that such attorneys shall be authorized hereunder to lawfully do or cause to be done by virtue hereof. All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the security interests created hereby are released.

7.2. Duty of Agent. Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession shall be to deal with it in the same manner as Agent deals with similar property for its own account. Neither Agent or any Lender nor any of their respective officers, directors, employees or agents shall be liable for any failure to demand, collect or realize upon any of the Collateral or for any delay in doing so (except to the extent Agent, such Lender or such officers, directors, employees or agents acted with gross negligence, bad faith or in willful misconduct as determined by a court of competent jurisdiction) or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on Agent and Lenders hereunder are solely to protect Agent's and Lenders' interests in the Collateral and shall not impose any duty upon Agent or any Lender to exercise any such powers. Agent and Lenders shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Grantor for any act or failure to act hereunder, except to the extent Agent or a Lender (or such officer, director, employee or agent) acted with gross negligence, bad faith or in willful misconduct as determined by a court of competent jurisdiction.

7.3. Photocopy of this Agreement. A photographic or other reproduction of this Agreement shall be sufficient as a financing statement or other filing or recording document or instrument for filing or recording in any jurisdiction.

7.4. Authority of Agent. Each Grantor acknowledges that the rights and responsibilities of Agent under this Agreement with respect to any action taken by Agent or the exercise or non-exercise by Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Agreement shall, as between Agent and Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between Agent and the Grantors, Agent shall be conclusively presumed to be acting as agent for Lenders with full and valid authority to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement, to make any inquiry respecting such authority.

## 8. Miscellaneous.

8.1. Amendments in Writing. None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except in accordance with Section 10.1 of the Credit Agreement.

8.2. Notices. All notices, requests and demands to or upon Agent or any Grantor hereunder shall be effected in the manner provided for in Section 10.2 of the Credit Agreement and each such notice, request or demand to or upon any Grantor shall be addressed to such Grantor in care of Borrower at Borrower's notice address set forth on Schedule 1.

8.3. Indemnification by Grantors. Each Grantor hereby agrees, on a joint and several basis, to indemnify, exonerate and hold Agent, each Lender and each of the officers, directors, employees, Affiliates and agents of Agent and each Lender (each a "Lender Party" and collectively, the "Lender Parties") free and harmless from and against any and all actions, causes of action, suits, losses, liabilities, damages and out-of-pocket expenses, including Legal Costs, but expressly excluding any consequential, special or lost profits damages (collectively, the "Indemnified Liabilities"), incurred by Lender Parties or any of them as a result of, or arising out of, or relating to any act or omission by Borrower or any of its officer, directors, agents, including without limitation (a) the use, handling, release, emission, discharge, transportation, storage, treatment or disposal of any hazardous substance at any property owned or leased by any Grantor or any Subsidiary, (b) any violation of any Environmental Laws with respect to conditions at any property owned or leased by any Grantor or any Subsidiary or the operations conducted thereon, (c) the investigation, cleanup or remediation of offsite locations at which any Grantor or any Subsidiary or their respective predecessors are alleged to have directly or indirectly disposed of hazardous substances, or (d) the execution, delivery, performance or enforcement of this Agreement or any other Loan Document by any Lender Party, except to the extent any such Indemnified Liabilities result from (i) the gross negligence, bad faith or willful misconduct of a Lender Party as determined by a court of competent jurisdiction, or (ii) a dispute solely among Lender Parties. If and to the extent that the foregoing undertaking may be unenforceable for any reason, each Grantor hereby agrees to make the maximum contribution to the payment and satisfaction of each of the Indemnified Liabilities which is permissible under applicable law. The agreements in this Section 8.3 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.

### 8.4. Enforcement Expenses.

(a) Each Grantor agrees, on a joint and several basis, to pay or reimburse on demand each Lender and Agent for all duly documented, reasonable out-of-pocket costs and expenses (including Legal Costs) incurred in collecting against any Guarantor under the guarantee contained in Section 2 or otherwise enforcing or preserving any rights under this Agreement and the other Loan Documents.

(b) Each Grantor agrees to pay, and to save Agent and Lenders harmless from, any and all liabilities with respect to, or resulting from any delay in paying, any and all stamp, excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral or in connection with any of the transactions contemplated by this Agreement.

(c) The agreements in this Section 8.4 shall survive repayment of the Secured Obligations, any foreclosure under, or any modification, release or discharge of, any or all of the Collateral Documents and termination of this Agreement.



8.5. Captions. Captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

8.6. Nature of Remedies. All Secured Obligations of each Grantor and rights of Agent and Lenders expressed herein or in any other Loan Document shall be in addition to and not in limitation of those provided by applicable law. No failure to exercise and no delay in exercising, on the part of Agent or any Lender, any right, remedy, power or privilege hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

8.7. Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in “.pdf” format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including “.pdf”), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

8.8. Severability. The illegality or unenforceability of any provision of this Agreement or any instrument or agreement required hereunder shall not in any way affect or impair the legality or enforceability of the remaining provisions of this Agreement or any instrument or agreement required hereunder.

8.9. Entire Agreement. This Agreement, together with the other Loan Documents, embodies the entire agreement and understanding among the parties hereto and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof and any prior arrangements made with respect to the payment by any Grantor of (or any indemnification for) any fees, costs or expenses payable to or incurred (or to be incurred) by or on behalf of Agent or Lenders.

8.10. Successors: Assigns. This Agreement shall be binding upon Grantors, Lenders and Agent and their respective successors and assigns, and shall inure to the benefit of Grantors, Lenders and Agent and the successors and assigns of Lenders and Agent. No other Person shall be a direct or indirect legal beneficiary of, or have any direct or indirect cause of action or claim in connection with, this Agreement or any of the other Loan Documents. No Grantor may assign or transfer any of its rights or Obligations under this Agreement without the prior written consent of Agent.

8.11. Governing Law. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

8.12. Forum Selection; Consent to Jurisdiction. ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

8.13. Waiver of Jury Trial EACH GRANTOR, AGENT AND EACH LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

8.14. Set-off. Each Grantor agrees that Agent and each Lender have all rights of set-off and bankers' lien provided by applicable law, and in addition thereto, each Grantor agrees that at any time any Event of Default has occurred and is continuing, Agent and each Lender may apply to the payment of any Secured Obligations, whether or not then due, any and all balances, credits, deposits, accounts or moneys of such Grantor then or thereafter with Agent or such Lender.

8.15. Acknowledgements. Each Grantor hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents to which it is a party;

(b) it has received a fully executed copy of this Agreement;

(c) neither Agent nor any Lender has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and Agent and Lenders, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among Lenders or among the Grantors and Lenders.

8.16. Additional Grantors. Each Loan Party that is required to become a party to this Agreement pursuant to Section 6.8 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Loan Party of a joinder agreement in the form of Annex I hereto.

8.17. Releases.

(a) At such time as the Secured Obligations have been Paid in Full, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights in and to the Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, Agent shall deliver to the Grantors any Collateral held by Agent hereunder, and execute and deliver to the Grantors such documents as the Grantors shall reasonably request to evidence such termination.

(b) If any of the Collateral shall be sold or otherwise disposed of by any Grantor in a transaction permitted by the Credit Agreement, then Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral, so long as Borrower delivers to Agent a certificate of an officer of Borrower as to such sale or disposition being made in compliance with the Loan Documents. At the request and sole expense of Borrower, a Subsidiary Guarantor shall be released from its obligations hereunder in the event that all the equity interests of such Subsidiary Guarantor shall be sold, transferred, liquidated, dissolved or otherwise disposed of in a transaction permitted by the Credit Agreement; provided that Borrower shall have delivered to Agent, with reasonable notice prior to the date of the proposed release, a written request for release identifying the relevant Subsidiary Guarantor and the terms of the sale or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a certification by Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

8.18. Obligations and Liens Absolute and Unconditional. Each Grantor understands and agrees that the obligations of each Grantor under this Agreement shall be construed as continuing, absolute and unconditional without regard to (a) the validity or enforceability of any Loan Document, any of the Secured Obligations or any other collateral security therefor or guaranty or right of offset with respect thereto at any time or from time to time held by Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by any Grantor or any other Person against Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of any Grantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of any Grantor for the Secured Obligations, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Grantor, Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against any other Grantor or any other Person or against any collateral security or guaranty for the Secured Obligations or any right of offset with respect thereto, and any failure by Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from any other Grantor or any other Person or to realize upon any such collateral security or guaranty or to exercise any such right of offset, or any release of any other Grantor or any other Person or any such collateral security, guaranty or right of offset, shall not relieve any Grantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of Agent or any Lender against any Grantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

---

8.19. Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor or any Issuer for liquidation or reorganization, should any Grantor or any Issuer become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's or any Issuer's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured 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 Secured Obligations, whether as a "voidable preference", "fraudulent conveyance", 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 Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.20. Conflicting Terms. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Credit Agreement, the terms of the Credit Agreement shall control.

*[Signature page follows]*

---

Each of the undersigned has caused this Guarantee and Collateral Agreement to be duly executed and delivered as of the date first above written.

**GRANTOR:**

**VERU INC.,**  
a Wisconsin corporation

By: /s/ Mitchell S. Steiner  
Name: Mitchell S. Steiner, MD, FACS  
Title: CEO and President

[Signature Page to Guarantee and Collateral Agreement]

---

**AGENT:**

**SWK FUNDING LLC,**  
as Agent

By: SWK Holdings Corporation,  
its sole Manager

By: /s/ Winston Black \_\_\_\_\_

Name: Winston Black

Title: Chief Executive Officer

[Signature Page to Guarantee and Collateral Agreement]

**INTELLECTUAL PROPERTY SECURITY AGREEMENT**

This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of March 5, 2018 (as may be amended, restated, supplemented, or otherwise modified from time to time, this “**Agreement**”), made by VERU INC., a Wisconsin corporation (the “**Grantor**”), in favor of SWK FUNDING LLC, a Delaware limited liability company, as agent (in such capacity, “**Agent**”) for the Lenders (as defined below) party to the Credit Agreement (as defined below).

**WITNESSETH:**

WHEREAS, pursuant to that certain Credit Agreement, dated on or about the date hereof (as amended, restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), by and among the Grantor, Agent and the financial institutions party thereto from time to time as lenders (each a “**Lender**” and collectively, the “**Lenders**”), Agent and Lenders have agreed to make certain financial accommodations available to Grantor, and Grantor has granted a security interest to Agent, for the benefit of Lenders, in, among other things, all right, title and interest of Grantor in, to and under all of Grantor’s FC2 Intellectual Property (as defined below), whether now existing or hereafter arising or acquired as security for the Obligations; and

WHEREAS, Grantor is the owner of the entire right, title and interest in, to and under the FC2 Intellectual Property listed on Schedule I hereto.

NOW, THEREFORE, in consideration of the premises and to induce Agent and Lenders to enter into the Credit Agreement, Grantor hereby agrees with Agent as follows:

**1. Defined Terms.**

(a) Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings provided in the Credit Agreement.

(b) Definitions of Certain Terms Used Herein. As used herein, the following terms shall have the following meanings:

“**Copyrights**” shall mean all of Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title, and interest in and to, the following, in each case, solely related to the FC2 Product: (i) copyrights, rights and interests in copyrights, works protectable by copyright, all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Copyright Office or in any similar office or agency of the United States, any State thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) all renewals of any of the foregoing.

“**Copyright Licenses**” shall mean all written agreements naming Grantor as licensor or licensee, granting any right under any Copyright, including the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright (other than agreements relating to widely-available software subject to “shrink-wrap” or “click-through” software licenses).

“**Credit Agreement**” shall have the meaning assigned to such term in the recitals of this Agreement.

---

**“FC2 Intellectual Property”** means all Intellectual Property owned or leased by Borrower and which is solely used in connection with the FC2 Product.

**“Intellectual Property”** shall mean all present and future: trade secrets, know-how and other proprietary information; Trademarks and Trademark Licenses, internet domain names, service marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; Copyrights (including Copyrights for computer programs, but excluding commercially available off-the-shelf software and any intellectual property rights relating thereto) and Copyright Licenses, and all tangible and intangible property embodying the Copyrights, unpatented inventions (whether or not patentable); Patents and Patent Licenses; Mask Works; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; customer lists and customer information, the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing, in each case, solely used in connection with the FC2 Product.

**“IP Collateral”** shall have the meaning assigned to such term in Section 2 hereof.

**“Licenses”** shall mean, collectively, the Trademark Licenses, the Patent Licenses, and the Copyright Licenses.

**“Mask Works”** shall mean all of Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title, and interest in and to, mask works or similar rights available for the protection of semiconductor chips, in each case, solely related to the FC2 Product.

**“Patents”** shall mean all of Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title and interest in and to, the following, in each case, solely related to the FC2 Product: (i) all patents, patent applications, inventions, invention disclosures and improvements, and all applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any political subdivision thereof, or in any other country, and all research and development relating to the foregoing; and (ii) the reissues, divisions, continuations, renewals, re-examinations, extensions and continuations-in-part of any of the foregoing.

**“Patent Licenses”** shall mean all agreements, whether written or oral, providing for the grant by or to Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, solely related to the FC2 Product.

**“Trademarks”** shall mean all of Grantor’s (or if referring to another Person, such other Person’s) now existing or hereafter acquired right, title, and interest in and to the following, in each case, solely related to the FC2 Product: (i) all of Grantor’s (or if referring to another Person, such other Person’s) trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, all



applications, registrations and recordings relating to the foregoing as may at any time be filed in the United States Patent and Trademark Office or in any similar office or agency of the United States, or in any other country, and all research and development and the goodwill of the business relating to the foregoing; (ii) all renewals thereof; and (iii) all designs and general intangibles of a like nature.

“**Trademark Licenses**” shall mean, collectively, each agreement, whether written or oral, providing for the grant by or to Grantor of any right to use any Trademark, solely related to the FC2 Product.

(c) **Other Definitional Provisions.**

(i) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and paragraph references are to this Agreement unless otherwise specified.

(ii) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

**2. Grant of Security Interest.** To secure the payment and performance of the Obligations, Grantor hereby confirms and acknowledges that it has granted (and, to the extent not previously granted under the Guarantee and Collateral Agreement, does hereby grant) to Agent, for the benefit of Lenders, a lien and security interest in Grantor’s entire right, title and interest in its FC2 Intellectual Property and all proprietary rights relating to or arising from such FC2 Intellectual Property, in each case whether now owned or hereafter acquired by Grantor, and including, without limitation, Grantor’s right, title and interest in and to the FC2 Intellectual Property and proprietary rights identified on Schedule I attached hereto and made a part hereof, and the right to sue for past, present and future infringements and dilutions, and all rights corresponding thereto throughout the world, and the entire goodwill of Grantor’s business connected with and symbolized by such FC2 Intellectual Property and all income, fees, royalties, proceeds and other payments at any time due or payable with respect to any of the foregoing (referred to collectively as the “**IP Collateral**”); provided, that the IP Collateral shall not include the Excluded Property (as defined in the Guarantee and Collateral Agreement).

**3. Protection of FC2 Intellectual Property by Grantor.** Grantor shall, at its sole cost, expense and risk, in connection with the operation of its business, comply with the requirements set forth in Section 5.7 of the Guarantee and Collateral Agreement in respect to the FC2 Intellectual Property.

**4. Representations and Warranties.** Grantor represents and warrants that:

(a) Schedule I is a true, correct and complete list of all registered or applied-for FC2 Intellectual Property in which Grantor purports to have an ownership or license interest.

(b) Grantor has the legal right and authority to enter into this Agreement and perform its terms.

(c) If Grantor amends its name, Grantor shall provide copies of such amendment documentation to Agent and shall record the same with the appropriate Governmental Authority and shall execute and deliver such agreements or documentation as Agent shall request to maintain a perfected first priority security interest in the IP Collateral subject to Permitted Liens.

**5. No Violation of Credit Agreement.** The representations, warranties or covenants contained herein are supplemental to those representations, warranties and covenants contained in the other Loan Documents, and shall not be deemed to modify any such representation, warranty or covenant contained in any other Loan Document.

**6. Agreement Applies to Future FC2 Intellectual Property.**

(a) The provisions of this Agreement shall automatically apply to any such additional property or rights described in Section 2 above, all of which shall be deemed to be and treated as "IP Collateral" within the meaning of this Agreement.

(b) Upon the request of Agent, Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as Agent may reasonably request to evidence Agent's security interest in any IP Collateral and the goodwill of Grantor relating thereto or represented thereby (including, without limitation, filings with the United States Patent and Trademark Office, or the United States Copyright Office or any similar office), and Grantor hereby constitutes Agent as its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; provided, however, that Agent's taking of such action shall not be a condition to the creation or perfection of the security interest created hereby.

**7. Grantor's Rights to Enforce FC2 Intellectual Property.** Prior to Agent's giving of notice to Grantor following the occurrence and during the continuance of an Event of Default, Grantor shall have the exclusive right to sue for past, present and future infringement of the IP Collateral, including the right to seek injunctions and/or money damages, in an effort by Grantor to protect the IP Collateral against encroachment by third parties, provided, however, that:

(a) Any money damages awarded or received by Grantor on account of such suit (or the threat of such suit) shall constitute IP Collateral.

(b) Any damages recovered in any action pursuant to this Section, net of costs and attorneys' fees reasonably incurred, shall be applied in accordance with the Credit Agreement and the Guarantee and Collateral Agreement.

(c) Following the occurrence and during the continuance of any Event of Default, Agent, by notice to Grantor may terminate or limit Grantor's rights under this Section 7.

**8. Agent's Actions to Protect FC2 Intellectual Property.** Pursuant to and in accordance with the Credit Agreement, Agent, acting in its own name or in that of Grantor, may (but shall not be required to) act in Grantor's place and stead and/or in Agent's own right with respect to the rights and obligations of Grantor under Section 3, Section 6 and Section 7 of this Agreement.

**9. Rights Upon Default.** Upon the occurrence and during the continuance of any Event of Default, Agent may exercise all rights and remedies as provided for in the Credit Agreement.

**10. Agent as Attorney In Fact.**

- (a) Grantor hereby irrevocably constitutes and designates Agent as its attorney-in-fact at all times prior to the termination of this Agreement pursuant to Section 13 hereof, to:
  - (i) following the occurrence and during the continuance of an Event of Default, supplement and amend from time to time Schedule I of this Agreement to include any new or additional FC2 Intellectual Property of Grantor.
  - (ii) exercise any of the rights and powers referenced herein in accordance with this Agreement.
- (b) The grant of this power of attorney, being coupled with an interest, shall be irrevocable until the Obligations are paid in full.
- (c) Agent shall not be obligated to do any of the acts or to exercise any of the powers authorized by Section 8, Section 9 or Section 10 of this Agreement, but if Agent elects to do any such act or to exercise any of such powers, it shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Grantor for any act or omission to act, except to the extent Agent acted with gross negligence or willful misconduct as determined by a court of competent jurisdiction.

**11. Agent's Rights.** Upon an Event of Default and during the continuance thereof, any use by Agent of the IP Collateral, as authorized hereunder in connection with the exercise of Agent's rights and remedies under this Agreement and under the Credit Agreement shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges.

**12. No Limitation; Loan Documents.** This Agreement has been executed and delivered by Grantor for the purpose of recording the security interest granted to Agent with respect to the IP Collateral with the United States Patent and Trademark Office, the United States Copyright Office, as well as with any similar office or department of any other foreign or domestic Governmental Authority. The security interest granted hereby has been granted as a supplement to, and not in limitation of, the security interest granted to Agent, for the benefit of Lender, under the Guarantee and Collateral Agreement and the other Loan Documents. The other Loan Documents (and all rights and remedies of Grantor, Agent, and Lenders thereunder) shall remain in full force and effect in accordance with their terms.

**13. Termination; Release of IP Collateral.** This Agreement and all obligations of Grantor and Agent hereunder shall terminate on the date upon which the Obligations are performed in full and paid in full. Upon termination of this Agreement, Agent shall, at the expense of the Grantor, take such actions required by the Credit Agreement or the Guarantee and Collateral Agreement or as otherwise reasonably requested by Grantor to release its security interest in the IP Collateral.

**14. Binding Effect; Benefits.** This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of Agent, Lenders and their respective successors and assigns.

**15. GOVERNING LAW. THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).**

---

**16. Counterparts.** This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in “.pdf” format through electronic mail of any executed signature page to this Agreement shall constitute effective delivery of such signature page and shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

**17. Copy of Agreement.** Grantor acknowledges receipt of a signed copy of this Agreement.

*[Remainder of page intentionally blank; signature page follows.]*

---

**IN WITNESS WHEREOF**, the parties have caused this Intellectual Property Security Agreement to be executed by its duly authorized representatives as of the date first above written.

**GRANTOR:**

**VERU INC.**

By: /s/ Mitchell S. Steiner

Name: Mitchell S. Steiner, MD, FACS

Title: CEO and President

[Signature Page to Intellectual Property Security Agreement]

---

**AGENT:**

**SWK FUNDING LLC**

By: SWK Holdings Corporation,  
its sole Manager

By: /s/ Winston Black  
Name: Winston Black  
Title: Chief Executive Officer

[Signature Page to Intellectual Property Security Agreement]

## PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT (this "**Agreement**") dated as of March 5, 2018, is executed by the undersigned Pledgor in favor of **SWK FUNDING LLC**, a Delaware limited liability company, as agent for all the Lenders (in such capacity, "**Agent**").

## WITNESSETH:

WHEREAS, Veru Inc., a Wisconsin corporation ("**Pledgor**"), as Borrower, Agent and certain financial institutions ("**Lenders**") have entered into that certain Credit Agreement, dated as of the date hereof, pursuant to which such Lenders will make Loans to Pledgor (as existing on the date hereof and as may be further, modified, amended or restated from time to time the "**Credit Agreement**");

WHEREAS, Pledgor hereby acknowledges that as the Borrower, it will directly and indirectly benefit from the making of such Loans; and

NOW, THEREFORE, in consideration of the agreements made by Agent and Lenders for the benefit of Pledgor and the other Loan Parties in the Credit Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** When used herein, capitalized terms which are not otherwise defined have the meanings assigned thereto in the Credit Agreement.

2. **Pledge.** As security for the payment and performance of all of the Obligations, Pledgor hereby pledges to Agent, and grants to Agent, for the benefit of Agent and Lenders, a continuing security interest in, all of the following, whether now existing or hereafter owned, existing or arising (the "**Subject Collateral**"):

(a) The equity interests held by Pledgor in each Person described on Schedule I hereto (the "**Pledgee**") and any investment property and general intangibles evidenced by or relating to such equity interests (collectively, the "**Subject Securities**"), and all other property hereafter delivered to Agent in substitution for or in addition to any of the foregoing;

(b) all documents, certificates and/or instruments representing any of the foregoing and all cash, securities, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the foregoing, except for any distributions with respect to the Subject Securities that would be permitted under the Loan Documents; and

(c) all products and proceeds of all of the foregoing.

Pledgor agrees to deliver to Agent, for the benefit of itself and Lenders, promptly upon receipt and in due form for transfer, any certificates evidencing the Subject Securities, and any other Subject Collateral which may at any time or from time to time come into the possession or control of Pledgor; and prior to the delivery thereof to Agent, such Subject Collateral shall be held by Pledgor separate and apart from its other property and in express trust for Agent.

Pledgor further agrees to obtain the written acknowledgment of any custodian of the Subject Collateral, to the effect that (i) all rights of Pledgor in the Subject Collateral are subject to such security interest, (ii) such custodian is authorized and instructed to comply with any instruction of Agent with respect to disposition or transfer of the Subject Collateral, including any instruction to cease accepting instructions from Pledgor, and (iii) in the event of a conflict between instructions given by Agent and instructions given by Pledgor, Agent's instructions shall control. It is Pledgor's intent that, by virtue of this Agreement and such acknowledgments, Agent is granted "control" within the meaning of Sections 9-104 and 9-106 of the Uniform Commercial Code as in effect in the State of New York (the "UCC") with respect to the Subject Collateral and any deposit account or security account to which the Subject Collateral is credited. Pledgor hereby agrees that it will not grant "control" (within the meaning of such Sections of the UCC) to any Person other than Agent with respect to the Subject Collateral or any deposit account to which the Subject Collateral is credited.

3. Warranties; Further Assurances. Pledgor warrants to Agent that: (a) Pledgor is (or at the time of any future delivery, pledge, assignment or transfer thereof will be) the legal and equitable owner of the Subject Collateral owned by it free and clear of all liens, security interests and encumbrances of every description whatsoever other than the security interest created hereunder; and (b) the pledge and delivery of the Subject Collateral owned by Pledgor pursuant to this Agreement will create a valid first priority, perfected security interest in such Subject Collateral in favor of Agent and its assigns.

So long as any of the Obligations shall be outstanding, Pledgor (i) shall not, without the express prior written consent of Agent, sell, assign, exchange, pledge or otherwise transfer, encumber, or grant any option, warrant or other right to purchase any Subject Securities pledged hereunder, or otherwise diminish or impair any of its rights in, to or under any of the Subject Collateral; (ii) hereby consents to the filing of such Uniform Commercial Code financing statements and other documents (and will pay the costs of filing and recording or re-filing and re-recording the, same in all public offices reasonably deemed necessary or appropriate by Agent) and will do such other acts and things, all as Agent may from time to time reasonably request, to establish and maintain a valid, first priority perfected security interest in the Subject Collateral (free of all other liens, claims and rights of third parties whatsoever) to secure the performance and payment of the Obligations; (iii) will execute and deliver to Agent such allonges, endorsements and similar documents relating to the Subject Collateral, satisfactory in form and substance to Agent, as Agent may reasonably request; and (iv) will furnish Agent such information concerning the Subject Collateral as Agent may from time to time reasonably request.

4. Holding in Name of Agent, etc. Agent may from time to time after the occurrence and during the continuance of an Event of Default, with prior written notice to the Pledgor, take all or any of the following actions: (a) transfer all or any part of the Subject Collateral into the name of Agent or any nominee or sub-agent for Agent, with or without disclosing that such Subject Collateral is subject to the lien, pledge and security interest hereunder, (b) appoint one or more sub-agents or nominees for the purpose of retaining physical



possession of the Subject Collateral, (c) notify the parties obligated on any of the Subject Collateral to make payment directly to Agent of any amounts due or to become due thereunder, (d) endorse any checks, drafts or other writings in the name of the Pledgor to allow collection of the Subject Collateral, (e) enforce collection of any of the Subject Collateral by suit or otherwise, and surrender, release or exchange all or any part thereof, or compromise or renew for any period (whether or not longer than the original period) any obligations of any nature of any party with respect thereto, and (f) take control of any proceeds of the Subject Collateral.

5. Voting Rights, Dividends, etc. Notwithstanding any other provisions contained in this Agreement, so long as the Obligations remain unpaid, and so long as Agent has not given the notice referred to in Subsection 5(c) below:

(a) Pledgor shall be entitled to exercise any and all voting or consensual rights and powers and purchase or subscription rights (any exercise by Pledgor of such purchase or subscription rights may be made only from funds of Pledgor not comprising the Subject Collateral) relating or pertaining to the Subject Collateral or any part thereof for any purpose; provided, that Pledgor agrees that it will not exercise any such right or power in any manner which would have a material adverse effect on the value of the Subject Collateral or any part thereof or any other material adverse effect in relation to the Collateral or Pledgor's obligations pursuant to the Credit Agreement or any other Loan Document.

(b) Pledgor shall be entitled to receive and retain any and all dividends, interest or other cash distributions payable on or in respect of the Subject Collateral if such dividends, interest or other distributions are permitted by the Loan Documents, but all dividends, interest and distributions in respect of the Subject Collateral or any part thereof made in Subject Securities, whether resulting from a subdivision, combination or reclassification of Subject Collateral or any part thereof or received in exchange for Subject Collateral or any part thereof or as a result of any merger, consolidation, acquisition or other exchange of assets to which any Person who issues a Subject Security may be a party or otherwise or as a result of any exercise of any purchase or subscription rights, shall be and become part of the Subject Collateral hereunder and, if received by Pledgor, shall be forthwith delivered to Agent in due form for transfer (i.e., endorsed in blank or accompanied by stock or bond powers executed in blank) to be held for the purposes of this Agreement.

(c) Upon written notice delivered to the Pledgor from Agent of the occurrence of an Event of Default and at all times during the continuance of an Event of Default, all rights and powers which Pledgor is entitled to exercise pursuant to this Section 5, and all rights of Pledgor to receive and retain dividends pursuant to Subsection 5(b) hereof, shall forthwith cease, and all such rights and powers shall thereupon become vested in Agent which shall have, during the continuance of such Event of Default the sole and exclusive authority to exercise such rights and powers and to receive such dividends, interest or other distributions. Any and all money and other property paid over to or received by Agent pursuant to this Subsection 5(c) shall be retained by Agent as additional Subject Collateral hereunder and applied in accordance with the provisions hereof.

6. Remedies. Upon the occurrence and during the continuance of an Event of Default, Agent may exercise from time to time any rights and remedies available to it under, the UCC as in effect in the State of New York, the Loan Documents, or other applicable law. Without limiting the foregoing, whenever an Event of Default shall exist, Agent, to the extent necessary to satisfy the Obligations, (a) may, to the fullest extent permitted by applicable law, without notice, advertisement, hearing or process of law of any kind, (i) sell any or all of the Subject Collateral, free of all rights and claims of the Pledgor therein and thereto, at any public or private sale and (ii) bid for and purchase any or all of the Subject Collateral at any such public sale and (b) shall have the right, for and in the name, place and stead of the Pledgor, to execute endorsements, assignments and other instruments of conveyance or transfer with respect to all or any of the Subject Collateral. Pledgor hereby expressly waives, to the fullest extent permitted by applicable law, any and all notices, advertisements, hearings or process of law in connection with the exercise by Agent of any of its rights and remedies during the continuance of an Event of Default. Any notification of intended disposition of any of the Subject Collateral shall be deemed reasonably and properly given if given at least ten (10) days before such disposition. Any proceeds of any of the Subject Collateral may be applied by Agent pursuant to the Credit Agreement (and, after payment in full of all Obligations, any excess shall be delivered to the Pledgor or as a court of competent jurisdiction shall direct).

Agent is hereby authorized to comply with any limitation or restriction in connection with any sale of Subject Collateral as it may be advised by counsel is necessary in order to (a) avoid any violation of applicable securities laws or other laws (including, without limitation, compliance with such procedures as may restrict the number of prospective bidders or purchasers and/or further restrict such prospective bidders or purchasers to persons or entities who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of such Subject Collateral) or (b) obtain any required approval of the sale or of the purchase by any governmental authority or official, and Pledgor agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner and that Agent shall not be liable or accountable to Pledgor for any discount allowed by reason of the fact that such Subject Collateral is sold in compliance with any such limitation or restriction. Pledgor waives any right it may now or hereafter have to require Agent to marshal any of the collateral from time to time securing the Obligations guaranteed by Pledgor.

7. Waiver of Transfer Restrictions. Pledgor and the Pledgee hereby consent to the transactions contemplated herein, notwithstanding any limitations or restrictions on such transactions set forth in the governing documents of Pledgee or otherwise with respect to the transfer of any of the Subject Collateral. Without limiting the foregoing, Pledgor and the Pledgee agree that any rights of first refusal, options to purchase or other conditions or restrictions affecting the transfer of any of the Subject Collateral shall not be triggered by, or otherwise in any respect be applicable to, the execution and delivery of this Agreement or the exercise of Agent's rights and remedies under this Agreement, as amended from time to time, and upon Agent's exercise of its rights and remedies under this Agreement (as amended from time to time), Agent, a purchaser at a foreclosure sale of the Collateral or any such party's designee shall be immediately and automatically admitted as an owner of the Pledgee with all ownership rights accruing to it (including, without limitation, all rights to distributions and voting) without the need to obtain the consent of any owner or the Pledgee or to provide or

comply with a right of first refusal or option to purchase with respect to any of the Subject Collateral in favor of any owner, the Pledgee or any other Person, notwithstanding anything in the governing documents of Pledgee, any agreement to which the Pledgor is now or hereafter a party with respect to any of the Subject Collateral or otherwise to the contrary or in conflict thereof.

8. Attorney in Fact. Pledgor hereby irrevocably appoints Agent as its limitedattorney-in-fact in accordance with the powers granted in connection with this Agreement (without requiring Agent to act as such), with full power of substitution, which appointment as limited attorney-in-fact is irrevocable during the term of this Agreement, to take any action Agent deems necessary upon the occurrence and during the continuation of an Event of Default to perfect, protect and realize upon its lien and first priority security interest in the Subject Collateral, including the execution and delivery of any and all documents or instruments related to the Subject Collateral in Pledgor's name, or otherwise to effect fully the purpose, terms and conditions of this Agreement and the other Loan Documents, and said appointment shall create in Agent a power coupled with an interest.

9. General.

(a) Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Subject Collateral if it takes such action for that purpose as Agent would take to care and preserve its own property.

(b) No delay on the part of Agent in exercising any right, power or remedy shall operate as a waiver thereof, and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. No amendment, modification or waiver of, or consent with respect to, any provision of this Agreement shall be effective unless the same shall be in writing and signed and delivered by Agent and the Pledgor, and then such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(c) All obligations of the Pledgor and all rights, powers and remedies of Agent expressed herein are in addition to all other rights, powers and remedies possessed by them, including, without limitation, those provided by applicable law or in any other written instrument or agreement relating to any of the Obligations or any security therefor.

(d) Upon notice to the Pledgor, Agent may assign, without the Pledgor's consent, unless such consent is otherwise required pursuant to the Credit Agreement, its interests in this Agreement and the other Loan Documents to any other Person, including, without limitation, any of Agent's affiliates, to which it is permitted to assign its interest as Agent pursuant to the Credit Agreement.

(e) This Agreement shall be binding upon and inure to the benefit of each of the Pledgor, Pledgee and Agent and their respective successors and assigns.

(f) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, and each such counterpart shall be deemed an original but all such counterparts shall together constitute but one and the same Agreement.

10. Governing Law; Jurisdiction; Service of Process; Venue.

(a) THIS AGREEMENT SHALL BE A CONTRACT MADE UNDER AND GOVERNED BY THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES (OTHER THAN SECTION 5-1401 AND SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS CODE).

(b) ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, SHALL BE BROUGHT AND MAINTAINED EXCLUSIVELY IN THE COURTS OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK; *PROVIDED* THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSE OF ANY SUCH LITIGATION AS SET FORTH ABOVE. EACH PARTY FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS BY REGISTERED MAIL, U.S. FIRST CLASS POSTAGE PREPAID, OR BY PERSONAL SERVICE WITHIN OR WITHOUT THE STATE OF NEW YORK.

(c) EACH PARTY HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN ANY SUCH COURT REFERRED TO ABOVE AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, PLEDGOR HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND OR CLARIFY ANY RIGHT, POWER, REMEDY OR DEFENSE ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS, OR THE TRANSACTIONS CONTEMPLATED HEREIN OR THEREIN, WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY; AND AGREES

THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY. PLEDGOR FURTHER WAIVES ANY RIGHT TO SEEK TO CONSOLIDATE ANY SUCH LITIGATION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER LITIGATION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. FURTHER, PLEDGOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ANY LENDER, INCLUDING SUCH LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH LENDER WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. PLEDGOR ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION ARE A MATERIAL INDUCEMENT TO EACH LENDER'S ACCEPTANCE OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AS APPLICABLE.

11. Credit Agreement. Pledgor hereby agrees to be bound by any covenants stated to be binding upon them in the Credit Agreement and such covenants are hereby incorporated by reference as if fully set forth herein.

12. Modification. This Agreement shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing.

13. Duplicate Originals; Counterparts. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Agreement. Receipt by facsimile machine or in ".pdf" format through electronic mail of any executed signature page to this Agreement or any other Loan Document shall constitute effective delivery of such signature page. This Agreement and the other Loan Documents to the extent signed and delivered by means of a facsimile machine or other electronic transmission (including ".pdf"), shall be treated in all manner and respects and for all purposes as an original agreement or amendment and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such other Loan Document shall raise the use of a facsimile machine or other electronic transmission to deliver a signature or the fact that any signature or agreement or amendment was transmitted or communicated through the use of a facsimile machine or other electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

14. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

15. Recitals. The recital and introductory paragraphs hereof are a part hereof, form a basis for this Agreement and shall be considered prima facie evidence of the facts and documents referred to therein.

[Remainder of Page Intentionally Blank; Signatures on following page]

---

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered as of the day and year first written above.

Address for notices:

4400 Biscayne Blvd. Suite 888  
Miami, FL 33138  
Attn: Philip R Greenberg  
Facsimile:  
Email: pgreenberg@verupharma.com

With a copy to:

Greenberg Traurig, LLP  
333 S.E. 2nd Avenue  
Miami, FL 33131  
Facsimile: (305) 961-5856  
Attn: Joshua M. Samek, Esq.  
Email: samekj@gtlaw.com

**PLEDGOR:**

**VERU INC.,**  
a Wisconsin corporation

By: /s/ Mitchell S. Steiner  
Name: Mitchell S. Steiner, MD, FACS  
Title: CEO and President

[Signature Page to Pledge Agreement]

Address for Notices:

14755 Preston Road, Suite 105  
Dallas, Texas 75254  
Facsimile: (972) 687-7255  
Email: notifications@swkhold.com

With a copy to:

Holland & Knight LLP  
200 Crescent Court, Suite 1600  
Dallas, Texas 75201  
Facsimile: (214) 964-9501  
Attn: Ryan Magee  
Email: Ryan.Magee@hklaw.com

**AGENT:**

**SWK FUNDING LLC,**  
a Delaware limited liability company

By: SWK Holdings Corporation,  
its sole Manager

By: /s/ Winston Black  
Name: Winston Black  
Title: Chief Executive Officer

[Signature Page to Pledge Agreement]

---

**ACKNOWLEDGMENT**

The undersigned hereby acknowledges receipt of a copy of the foregoing Pledge Agreement, agrees to the terms of, and agrees to promptly note on its books and records the security interests granted under such Pledge Agreement, and waives any rights or requirement at any time hereafter to receive a copy of such Pledge Agreement in connection with the registration of any of the Subject Collateral in the name of Agent or its nominee or the exercise of voting rights by Agent, and, after written notice from Agent that an Event of Default has occurred and is continuing, agrees, that in acting upon the instructions of Agent, it will not require the further consent of, or seek further instruction from, the Pledgor at any time.

Acknowledged and Agreed:

THE FEMALE HEALTH COMPANY LIMITED, a company  
organized under the laws of the United Kingdom

By: /s/ Kevin J. Gilbert

Name: Kevin J. Gilbert

Title: Director

[Acknowledgment of Pledge Agreement]



**SCHEDULE I**

**SUBJECT SECURITIES**

<b><u>Pledged Entity</u></b>	<b><u>Pledgor</u></b>	<b><u>Percentage of Ownership</u></b>	<b><u>Pledged Ownership</u></b>	<b><u>Shares</u></b>	<b><u>Certificate Number(s)</u></b>
THE FEMALE HEALTH COMPANY LIMITED	VERU INC.	100%	65%	2,535,084	3

[Schedule I to Pledge Agreement]