FORM S-4/A

Registration of securities issued in business combination transactions [amend]

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Mailing Address
5301 WISCONSIN AVENUE NW
SUITE 570
WASHINGTON DC 20015

Business Address
5301 WISCONSIN AVENUE NW
SUITE 570
WASHINGTON DC 20015
301-215-7440

As filed with the Securities and Exchange Commission on October 21, 2020

Registration No. 333-240064

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 3 to

FORM S-4
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

PETROS PHARMACEUTICALS, INC.

(Exact name of Registrant as specified in its charter)

Delaware	**2834**	**85-1410058**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

1185 Avenue of the Americas, 3rd Floor
New York, New York 10036
973-242-0005
(Address including zip code, and telephone number, including area code, of Registrant's principal executive offices)

Charles S. Ryan, J.D., Ph.D.
Chief Executive Officer
Neurotrope, Inc.
1185 Avenue of the Americas, 3rd Floor
New York, New York 10036
973-242-0005
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Kenneth R. Koch, Esq.
Jeffrey P. Schultz, Esq.
Daniel A. Bagliebter, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
Chrysler Center
666 Third Avenue
New York, New York 10017
(212) 935-3000

John D. Shulman
Chairman of the Board
Metuchen Pharmaceuticals, LLC
200 U.S. Highway 9, Suite 500
Manalapan Township, New Jersey 07726
(848) 233-5568

Andrew M. Ray, Esq.
Jeffrey A. Letalien, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue
Washington, District of Columbia 20004
(202) 373-6000

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effectiveness of this registration statement and the satisfaction or waiver of all other conditions under the Merger Agreement described herein.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, please check the following box. ☐

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

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

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

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

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

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13(e)-4(i) (Cross-Border Issuer Tender Offer) ☐

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer) ☐

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

EXPLANATORY NOTE

This Amendment No. 3 ("Amendment No. 3"), to the Registration Statement on Form S-4 (File No. 333-240064) of Petros Pharmaceuticals, Inc. (the "Registration Statement"), is being filed solely for the purpose of filing Exhibits 2.8, 2.9, 4.1, 4.2, 4.3, 4.4, 4.5, 5.1, 10.3, 10.4, 10.5 and 99.1, as indicated in Part II of this Amendment No. 3. This Amendment No. 3 does not modify any provision of the proxy statement/prospectus that forms a part of the Registration Statement. Accordingly, the proxy statement/ prospectus has been omitted.

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 20. Indemnification of Directors and Officers.

Section 102 of the DGCL allows a corporation to eliminate the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except in cases where the director breached his or her duty of loyalty to the corporation or its stockholders, failed to act in good faith, engaged in intentional misconduct or a knowing violation of the law, willfully or negligently authorized the unlawful payment of a dividend or approved an unlawful stock redemption or repurchase or obtained an improper personal benefit. The Petros Certificate of Incorporation and Petros Bylaws contain a provision which eliminates directors' personal liability as set forth above.

The Petros Bylaws provides in effect that the Petros shall indemnify its directors and officers to the extent permitted by the Delaware law. Section 145 of the DGCL provides that a Delaware corporation has the power to indemnify its directors, officers, employees and agents in certain circumstances. Subsection (a) of Section 145 of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding provided that such director, officer, employee or agent acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, provided that such director, officer, employee or agent had no reasonable cause to believe that his or her conduct was unlawful.

Subsection (b) of Section 145 of the DGCL empowers a corporation to indemnify any director, officer, employee or agent, or former director, officer, employee or agent, who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery shall determine that despite the adjudication of liability such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

Section 145 further provides that to the extent that a director or officer or employee of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) and (b) or in the defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith; that indemnification provided by Section 145 shall not be deemed exclusive of any other rights to which the party seeking indemnification may be entitled; and the corporation is empowered to purchase and maintain insurance on behalf of a director, officer, employee or agent of the corporation against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his or her status as such whether or not the corporation would have the power to indemnify him or her against such liabilities under Section 145; and that, unless indemnification is ordered by a court, the determination that indemnification under subsections (a) and (b) of Section 145 is proper because the director, officer, employee or agent has met the applicable standard of conduct under such subsections shall be made by (1) a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (2) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (3) by the stockholders.

Item 21. Exhibits and Financial Statement Schedules.

A list of the exhibits included as part of this registration statement is set forth in the Exhibit Index that immediately precedes such exhibits and is incorporated herein by reference.

Item 22. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement);

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment will be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time will be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act of 1933 to any purchaser, each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

(5) That, for the purpose of determining liability of the Registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities of the Registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424; to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) any free writing prospectus relating to the offering prepared by or on behalf of such Registrant or used or referred to by the undersigned Registrant;

(iii) the portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or their securities provided by or on behalf of such Registrant; and

(iv) any other communication that is an offer in the offering made by such Registrant to the purchaser.

(6) That, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(7) That prior to any public reoffering of the securities registered hereunder through use of a prospectus which is a part of this registration statement, by any person or party who is deemed to be an underwriter within the meaning of Rule 145(c), the issuer undertakes that such reoffering prospectus will contain the information called for by the applicable registration form with respect to reofferings by persons who may be deemed underwriters, in addition to the information called for by the other Items of the applicable form.

(8) That every prospectus (i) that is filed pursuant to paragraph (7) immediately preceding, or (ii) that purports to meet the requirements of section 10(a)(3) of the Act and is used in connection with an offering of securities subject to Rule 415, will be filed as a part of an amendment to the registration statement and will not be used until such amendment is effective, and that, for purposes of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(9) To respond to requests for information that is incorporated by reference into the prospectus pursuant to Items 4, 10(b), 11, or 13 of Form S-4, within one business day of receipt of such request, and to send the incorporated documents by first class mail or other equally prompt means. This includes information contained in documents filed subsequent to the effective date of the registration statement through the date of responding to the request.

(10) To supply by means of a post-effective amendment all information concerning a transaction, and the company being acquired involved therein, that was not the subject of and included in the registration statement when it became effective.

(b) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

Exhibit Number	Description
2.1*+	Agreement and Plan of Merger and Reorganization, dated as of May 17, 2020, by and among Petros Pharmaceuticals, Inc., Neurotrope, Inc., PM Merger Sub 1, LLC, PN Merger Sub 2, Inc. and Metuchen Pharmaceuticals LLC (included as Annex A to the proxy statement/prospectus forming a part of this Registration Statement)
2.2*	First Amendment to the Agreement and Plan of Merger and Reorganization, dated as of July 23, 2020, by and among Petros Pharmaceuticals, Inc., Neurotrope, Inc., PM Merger Sub 1, LLC, PN Merger Sub 2, Inc. and Metuchen Pharmaceuticals LLC (included as Annex A to the proxy statement/prospectus forming a part of this Registration Statement)
2.3*	Second Amendment to the Agreement and Plan of Merger and Reorganization, dated as of September 29, 2020, by and among Petros Pharmaceuticals, Inc., Neurotrope, Inc., PM Merger Sub 1, LLC, PN Merger Sub 2, Inc. and Metuchen Pharmaceuticals LLC (included as Annex A to the proxy statement/prospectus forming a part of this Registration Statement)
2.4*	Form of Neurotrope Voting Agreement, by and between Metuchen Pharmaceuticals LLC and certain stockholders of Neurotrope, Inc. (included as Annex A to the proxy statement/ prospectus forming a part of this Registration Statement)
2.5*	Form of Metuchen Voting Agreement, by and between Neurotrope, Inc. and certain unitholders of Metuchen Pharmaceuticals LLC (included as Annex A to the proxy statement/prospectus forming a part of this Registration Statement)
2.6*	Form of Voting Agreement, by and between certain stockholders of Neurotrope, Inc. and Metuchen Pharmaceuticals, LLC
2.7*	Form of Lock-Up Agreement, by and among Petros Pharmaceuticals, Inc., Neurotrope, Inc., Metuchen Pharmaceuticals LLC and certain securityholders of Neurotrope, Inc. and Metuchen Pharmaceuticals LLC (included as Annex A to the proxy statement/prospectus forming a part of this Registration Statement)
2.8+	Form of Separation and Distribution Agreement, by and between Neurotrope, Inc. and Neurotrope Bioscience, Inc.
2.9	Form of Tax Matters Agreement by and between Neurotrope, Inc. and Neurotrope Bioscience, Inc.
3.1*	Certificate of Incorporation of Petros Pharmaceuticals, Inc.
3.2*	Amended and Restated Certificate of Incorporation of Petros Pharmaceuticals, Inc. (to be effective immediately after the Effective Time following the Mergers and included as Annex C to the proxy statement/prospectus forming a part of this Registration Statement)
3.3 *	Form of Amended and Restated Bylaws of Petros Pharmaceuticals, Inc. (to be effective immediately after the Effective Time following the Mergers)
4.1	Specimen Stock Certificate evidencing shares of Common Stock of Petros Pharmaceuticals, Inc.
4.2	Form of Series E Warrant of Petros Pharmaceuticals, Inc.
4.3	Form of Series F Warrant of Petros Pharmaceuticals, Inc.
4.4	Form of Series G Warrant of Petros Pharmaceuticals, Inc.
4.5	Form of Series H Warrant of Petros Pharmaceuticals, Inc.
5.1	Opinion of Mintz, Levin, Cohn, Ferris, Glovksy and Popeo, P.C. regarding the validity of the securities

10.1*	Backstop Agreement by and between Neurotrope and JCP III SM AIV, L.P., dated May 17, 2020 (incorporated by reference to Exhibit 99.9 to Neurotrope Inc.'s Current Report on Form 8-K, filed on May 18, 2020)

Exhibit Number	Description
10.2*	Note Conversion and Loan Repayment Agreement by and between Neurotrope, JCP III SM AIV, L.P. and Metuchen, dated May 17, 2020.
10.3++	License and Commercialization Agreement by and between VIVUS, Inc. and Metuchen Pharmaceuticals LLC, dated September 30, 2016.
10.4++	Commercial Supply Agreement by and between VIVUS, Inc. and Metuchen Pharmaceuticals LLC, dated September 30, 2016.
10.5++	Logistics Services Agreement by and between McKesson Specialty Care Distribution Corporation and Metuchen Pharmaceuticals LLC, dated November 28, 2018.
21.1*	Subsidiaries of Petros Pharmaceuticals, Inc.
23.1*	Consent of Friedman LLP, Independent Registered Public Accounting Firm to Neurotrope, Inc.
23.2*	Consent of EisnerAmper, LLP, Independent Registered Public Accounting Firm to Metuchen Pharmaceuticals, LLC
23.3	Consent of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (included in Exhibit 5.1 hereto)
24.1*	Powers of Attorney (contained on signature page to this Registration Statement)
99.1	Form of Proxy Card for the Neurotrope, Inc. Special Meeting of Stockholders
99.2*	Opinion of Gemini Valuation Services, LLC, financial advisor to Neurotrope, Inc., dated as of May 15, 2020 (included as Annex B-1 to the proxy statement/prospectus forming a part of this Registration Statement)
99.3*	Opinion of Gemini Valuation Services, LLC, financial advisor to Neurotrope, Inc., dated as of July 20, 2020 (included as Annex B-2 to the proxy statement/prospectus forming a part of this Registration Statement)
99.4*	Opinion of Gemini Valuation Services, LLC, financial advisor to Neurotrope, Inc., dated as of September 20, 2020 (included as Annex B-3 to the proxy statement/prospectus forming a part of this Registration Statement)
99.5*	Consent of Gemini Valuation Services, LLC, financial advisor to Neurotrope, Inc.
99.6*	Consent of John D. Shulman, to be named as director
99.7*	Consent of Bruce Bernstein, to be named as director
99.8*	Consent of Josh Silverman, to be named as director
99.9*	Consent of Greg Bradley, to be named as director
99.10*	Consent of Wayne R. Walker, to be named as director

* Previously filed.

† Management contract or compensatory plan or arrangement.

\+ Certain schedules and exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the Securities and Exchange Commission upon request.

++ Certain provisions and terms of exhibits have been omitted pursuant to Item 601(b)(10)(iv) of Regulation S-K. A copy of any omitted provision and/or terms of exhibits will be furnished to the Securities and Exchange Commission upon request.

SIGNATURES

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the Township of Manalapan Township, New Jersey, on October 21, 2020.

PETROS PHARMACEUTICALS, INC.

By: /s/ Fady Boctor
Name: Fady Boctor
Title: President and Chief Commercial Officer (principal executive officer)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Fady Boctor Fady Boctor	President and Chief Commercial Officer (Principal Executive Officer)	October 21, 2020
/s/ Keith Lavan Keith Lavan	Chief Financial Officer (Principal Accounting and Financial Officer)	October 21, 2020
/s/ John Shulman John Shulman	Executive Chairman of the Board of Directors	October 21, 2020
/s/ Josh Silverman Josh Silverman	Director	October 21, 2020

Exhibit 2.8

SEPARATION AND DISTRIBUTION AGREEMENT

By and Between NEUROTROPE, INC.

and

NEUROTROPE BIOSCIENCE, INC.

Dated as of _____, 2020

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SEPARATION AND DISTRIBUTION AGREEMENT, dated as of _____, 2020, by and between Neurotrope, Inc., a Nevada corporation ("Neurotrope"), and Neurotrope Bioscience, Inc., a Delaware corporation ("NBI"). Capitalized terms used herein and not otherwise defined in Article I shall have the respective meanings assigned to them in the Merger Agreement (as hereinafter defined).

R E C I T A L S

WHEREAS, Neurotrope, Petros Pharmaceuticals, Inc.("Petros"), PM Merger Sub 1, LLC ("Merger Sub 1"), PN Merger Sub 2, Inc. ("Merger Sub 2"), and Metuchen Pharmaceuticals LLC ("Metuchen") entered into that certain Agreement and Plan of Merger dated as of May 17, 2020, as amended, under which the parites have agreed to (1) the merger of Merger Sub 1, with and into Metuchen, with Metuchen surviving as a wholly-owned subsidiary of Petros (the "Metuchen Merger") and (2) the merger of Merger Sub 2 with and into Neurotrope, with Neurotrope surviving as a wholly-owned subsidiary of Petros (the "Neurotrope Merger" and together with the Metuchen Merger, the "Merger"), and in connection therewith each outstanding share of Neurotrope common stock will be exchanged for one (1) share of Petros common stock and each outstanding share of Neurotrope preferred stock will be exchanged for one (1) share of Petros preferred stock.

WHEREAS the board of directors of Neurotrope has determined that it is in the best interests of Neurotrope and its shareholders to distribute its entire interest in its wholly owned Subsidiary, NBI, by way of a stock dividend to be made to holders of Neurotrope Common Stock;

WHEREAS in furtherance of the foregoing, it is appropriate and desirable to effect the Spin-Off, as more fully described in this Agreement;

WHEREAS Neurotrope and NBI have prepared, and NBI has filed with the Commission, the Form S-1 that sets forth appropriate disclosure concerning NBI and the Distribution;

WHEREAS Neurotrope and NBI intend that each of the transactions included in the Separation and Distribution qualify for its Intended Tax Treatment; and

WHEREAS it is appropriate and desirable to set forth the principal corporate transactions required to effect the Spin-Off and certain other agreements that will govern certain matters relating to the Spin-Off and the relationship of Neurotrope, NBI and their respective Subsidiaries following the Distribution.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

"Action" means any claim, demand, action, suit, countersuit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or any Federal, state, local, foreign or international arbitration or mediation tribunal.

"Affiliate" of any Person means a Person that controls, is controlled by or is under common control with such Person. As used herein, "control" of any entity means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such entity, whether through ownership of voting securities or other interests, by contract or otherwise; provided, however, that (i) NBI shall not be considered an Affiliate of Neurotrope or any of the other members of the Neurotrope Group and (ii) Neurotrope and the other members of the Neurotrope Group shall not be considered Affiliates of NBI.

"Agent" means the distribution agent to be appointed by Neurotrope to distribute to the Record Holders, pursuant to the Distribution, the shares of NBI Common Stock held by Neurotrope.

"Agreement" means this Separation and Distribution Agreement, including the Schedules hereto, as it may be amended from time to time.

"Ancillary Agreements" means any instruments, assignments, documents and agreements executed in connection with the implementation of the transactions contemplated by this Agreement.

"Assets" means all assets, properties and rights (including goodwill), wherever located (including in the possession of vendors or other third parties or elsewhere), whether real, personal or mixed, tangible or intangible, or accrued or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person, including the following:

(a) all accounting and other books, records and files, whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape or any other form;

(b) all apparatus, computers and other electronic data processing equipment, fixtures, machinery, furniture, office and other equipment, including hardware systems, circuits and other computer and telecommunication assets and equipment, special and general tools, test devices, APIs and models and other tangible personal property;

(c) all inventories of APIs, raw materials, supplies, work-in-process and finished goods and products;

(d) all interests in real property of whatever nature, including easements, whether as owner, mortgagee or holder of a Security Interest in real property, lessor, sublessor, lessee, sublessee or otherwise;

(e) all interests in any capital stock or other equity interests of NBI; all bonds, notes, debentures or other securities issued by NBI; all loans, advances or other extensions of credit or capital contributions to NBI; all other investments in securities of NBI; and all rights as a partner, joint venturer or participant;

(f) all license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services, unfilled orders for the manufacture and sale of products and other contracts, agreements or commitments and all rights arising thereunder;

(g) all written technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals and materials and analyses prepared by consultants and other third parties;

(h) all United States, state, multinational and foreign intellectual property, including patents, copyrights, trade names, trademarks, service marks, slogans, logos, trade dresses and other source indicators and the goodwill of the business symbolized thereby; all registrations, applications, recordings, disclosures, renewals, continuations, continuations-in-part, divisions, reissues, reexaminations, foreign counterparts and other legal protections and rights related to any of the foregoing; mask works, trade secrets, inventions and other proprietary information, including know-how, processes, formulae, techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals, discoveries, inventions, licenses from third parties granting the right to use any of the foregoing and all tangible embodiments of the foregoing in whatever form or medium;

(i) all computer applications, programs, software and other code (in object and source code form), including operating software, network software, firmware, middleware, design software, design tools, systems documentation, instructions, ASP, HTML, DHTML, SHTML and XML files, cgi and other scripts, APIs, web widgets, algorithms, models, methodologies, files, documentation related to any of the foregoing and all tangible embodiments of the foregoing in whatever form or medium now known or yet to be created;

(j) all Internet URLs, domain names, social media handles and Internet user names;

(k) all websites, databases, content, text, graphics, images, audio, video, data and other copyrightable works or other works of authorship including all translations, adaptations, derivations and combinations thereof;

(l) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, subscriber, customer and vendor data, correspondence and lists, product literature and other advertising and promotional materials, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, server and traffic logs, quality records and reports and other books, records, studies, surveys, reports, plans, business records and documents;

(m) all prepaid expenses, trade accounts and other accounts and notes receivable (whether current or non-current);

(n) all claims or rights against any Person arising from the ownership of any other Asset, all rights in connection with any bids or offers, all claims, causes in action, lawsuits, judgments or similar rights, all rights under express or implied warranties, all rights of recovery and all rights of setoff of any kind and demands of any nature, in each case whether accrued or contingent, whether in tort, contract or otherwise and whether arising by way of counterclaim or otherwise;

(o) all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution;

(p) all licenses, permits, approvals and authorizations that have been issued by any Governmental Authority and all pending applications therefor;

(q) Cash, bank accounts, lock boxes and other deposit arrangements;

(r) interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements; and

(s) all goodwill as a going concern and other intangible properties.

"Benefit Plan" means any plan, program, policy, agreement, arrangement or understanding that is an employment, consulting, deferred compensation, executive compensation, incentive bonus or other bonus, employee pension, profit sharing, savings, retirement, supplemental retirement, stock option, stock purchase, stock appreciation right, restricted stock, restricted stock unit, deferred stock unit, other equity-based compensation, severance pay, retention, change in control, salary continuation, life, death benefit, health, hospitalization, workers' compensation, sick leave, vacation pay, disability or accident insurance or other employee benefit plan, program, agreement or arrangement, including any "employee benefit plan" (as defined in Section 3(3) of ERISA) (whether or not subject to ERISA) sponsored or maintained by such entity or to which such entity is a party.

"Cash" means cash, cash equivalents, bank deposits and marketable securities, whether denominated in United States dollars or otherwise.

"Commission" means the Securities and Exchange Commission.

"Consents" means any consents, waivers or approvals from, or notification requirements to, any Person other than a member of either Group.

"Contributions" has the meaning set forth in Schedule I.

"Credit Support Instruments" has the meaning set forth in Section 3.01(a).

"D&O Policies" has the meaning set forth in Section 8.01(e).

"Determination" has the meaning set forth in the TMA.

"Distribution" means the distribution, on a pro rata basis, by Neurotrope to the Record Holders of all the outstanding shares of NBI Common Stock owned by Neurotrope on the Distribution Date.

"Distribution Date" means the date, determined by Neurotrope in accordance with Section 5.03, on which the Distribution occurs.

"Domain Names" means the domain names owned by a member of the Neurotrope Group or NBI, including those listed in Schedule XIII, Schedule XIV or Schedule XV.

"Employee" means any individual employed by another Person.

"Establishment Date" means the date on which the applicable NBI Benefit Plan was or will be established.

"First Post-Distribution Report" has the meaning set forth in Section 12.07.

"Form S-1" means the registration statement on Form S-1 filed by NBI with the Commission to effect the registration of NBI Common Stock pursuant to the Securities Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time.

"Former NBI Employee" means, as of an applicable date, each individual who is a former Employee of NBI For purposes of this Agreement, references to a "Former NBI Employee" shall not be deemed to refer to a Salary Continuation Former Employee, who shall be addressed specifically where applicable.

"Governmental Approvals" means any notices, reports or other filings to be given to or made with, or any Consents, registrations or permits to be obtained from, any Governmental Authority.

"Governmental Authority" means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other legislative, judicial, regulatory, administrative or governmental authority.

"Group" means the Neurotrope Group.

"Indemnifying Party" has the meaning set forth in Section 6.04(a).

"Indemnitee" has the meaning set forth in Section 6.04(a).

"Indemnity Payment" has the meaning set forth in Section 6.04(a).

"Information" means information, whether or not patentable, copyrightable or protectable as a trade secret, in written, oral, electronic or other tangible or intangible forms, stored in any medium now known or yet to be created, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product) and other technical, financial, employee or business information or data, documents, correspondence, materials and files.

"Insurance Proceeds" means those monies:

(a) received by an insured (or its successor-in-interest) from an insurance carrier;

(b) paid by an insurance carrier on behalf of the insured (or its successor-in-interest); or

(c) received (including by way of set-off) from any third party in the nature of insurance, contribution or indemnification in respect of any Liability; in any such case net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments), net of any costs or expenses incurred in the collection thereof and net of any Taxes resulting from the receipt thereof.

"Intended Tax Treatment" has the meaning set forth in the TMA.

"Intercompany Accounts" has the meaning set forth in Section 2.03(a).

"Intercompany Agreements" has the meaning set forth in Section 2.03(a).

"Law" means any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, government approval, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and, in each case, as amended.

"Liabilities" means any and all claims, debts, demands, actions, causes of action, suits, damages, obligations, accruals, accounts payable, reckonings, bonds, indemnities and similar obligations, agreements, promises, guarantees, make-whole agreements and similar obligations, and other liabilities and requirements, including all contractual obligations, whether absolute or contingent, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever arising, and including those arising under any Law, Action, threatened or contemplated Action or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, including those arising under this Agreement, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person. For the avoidance of doubt, Liabilities shall include attorneys' fees, the costs and expenses of all assessments, judgments, settlements and compromises, and any and all other costs and expenses whatsoever reasonably incurred in connection with anything contemplated by the preceding sentence (including costs and expenses incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions).

"Litigation Conditions" has the meaning set forth in Section 6.05(b).

"NBI" has the meaning set forth in the preamble.

"NBI Assets" means, without duplication, the following Assets:

(a) all Assets held by NBI;

(b) all other equity, partnership, membership, joint venture and similar interests set forth on Schedule III under the caption "Joint Ventures and Minority Investments";

(c) all Assets reflected on the NBI Business Balance Sheet, and all Assets acquired after the date of the NBI Business Balance Sheet that, had they been acquired on or before such date and owned as of such date, would have been reflected on the NBI Business Balance Sheet if prepared in accordance with generally accepted accounting principles in effect in the United States ("GAAP") applied on a consistent basis, subject to any dispositions of such Assets subsequent to the date of the NBI Business Balance Sheet;

(d) the Assets listed or described on Schedule IV;

(e) the rights related to the NBI Portion of any Shared Contract;

(f) all other Assets that are expressly provided by this Agreement or any Ancillary Agreement as Assets to be assigned to or retained by, or allocated to, NBI;

(g) all Assets held by a member of the Neurotrope Group that are determined by Neurotrope, in good faith, to be primarily related to or used or held for use primarily in connection with the business or operations of NBI; and

(h) Excess Cash (as defined in the Merger Agreement, as amended).

Notwithstanding the foregoing, the NBI Assets shall not include (i) any Neurotrope Retained Assets, (ii) any Assets governed by the TMA, (iii) the rights related to the Neurotrope Portion of Shared Contracts, and (iv) any Assets determined by Neurotrope, in good faith, to arise primarily from the business or operations of the Neurotrope Business (unless otherwise expressly provided in this Agreement.

"NBI Business" means the business currently conducted by NBI.

"NBI Business Balance Sheet" means the balance sheet of the NBI Business, including the notes thereto, as of [ ], 2020, included in the Form S-1..

"NBI Common Stock" means the common stock, $0.0001 par value per share, of NBI.

"NBI Employee" means, as of an applicable date, each Employee employed by NBI, including any individual who is on a leave of absence (including short-term disability but excluding long-term disability) from which such Employee is permitted to return to active employment in accordance with NBI's personnel policies, but excluding any Former NBI Employee.

"NBI Entities" means the entities the equity, partnership, membership, joint venture or similar interests of which are set forth on Schedule III under the caption "Joint Ventures and Minority Investments".

"NBI Indemnitees" has the meaning set forth in Section 6.03.

"NBI Liabilities" means, without duplication, the following Liabilities:

(a) all Liabilities of NBI and the NBI Entities;

(b) all Liabilities to the extent relating to, arising out of or resulting from:

(i) the operation or conduct of the NBI Business as conducted at any time prior to the Distribution (including any Liability to the extent relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority), which act or failure to act relates to the NBI Business);

(ii) the operation or conduct of the NBI Business or any other business conducted by NBI after the Distribution (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority));

(iii) any terminated, divested or discontinued businesses or operations of the NBI Business; or

(iv) the NBI Assets;

(c) all Liabilities reflected as liabilities or obligations on the NBI Business Balance Sheet, and all Liabilities arising or assumed after the date of the NBI Business Balance Sheet that, had they arisen or been assumed on or before such date and been existing obligations as of such date, would have been reflected on the NBI Business Balance Sheet if prepared in accordance with GAAP applied on a consistent basis, subject to any discharge of such Liabilities subsequent to the date of the NBI Business Balance Sheet;

(d) the Liabilities listed or described on Schedule V;

(e) the obligations related to the NBI Portion of any Shared Contract;

(f) all other Liabilities that are expressly provided by this Agreement or any Ancillary Agreement as Liabilities to be assumed or retained by, or allocated to, NBI; and

(g) all Liabilities to the extent relating to, arising out of or resulting from any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in, or incorporated by reference into, the Form S-1 and any other documents filed with the Commission in connection with the Spin-Off or as contemplated by this Agreement, other than with respect to the Neurotrope Disclosure Sections.

Notwithstanding the foregoing, the NBI Liabilities shall not include (i) any Neurotrope Retained Liabilities, (ii) any Liabilities governed by the TMA, (iii) any obligations related to the Neurotrope Portion of any Shared Contract or (iv) any Liabilities determined by Neurotrope, in good faith, to be primarily related to the business or operations of the Neurotrope Business (unless otherwise expressly provided in this Agreement).

"NBI Marks" means the trademarks, trade names and service marks owned by NBI and all goodwill relating thereto, including those listed in Schedule XII.

"NBI Portion" has the meaning set forth in Section 2.04.

"NBI Welfare Plan" means each Welfare Plan sponsored or maintained by NBI.

"Neurotrope" has the meaning set forth in the preamble.

"Neurotrope Assets" means (i) all Assets of the Neurotrope Group, (ii) the Neurotrope Retained Assets, (iii) any Assets held by NBI determined by Neurotrope, in good faith, to be primarily related to or used primarily in connection with the business or operations of the Neurotrope Business, (iv) all interests in the capital stock, or other equity interests in, the members of the Neurotrope Group (other than Neurotrope) and (v) the rights related to the Neurotrope Portion of any Shared Contract. Notwithstanding the foregoing, the Neurotrope Assets shall not include (a) any Assets governed by the TMA, and (b) the NBI Assets.

"Neurotrope Business" means the business and operations conducted by Neurotrope and its Subsidiaries other than the NBI Business.

"Neurotrope Common Stock" means the common stock, $0.0001 par value per share, of Neurotrope.

"Neurotrope Disclosure Sections" means all information set forth in or omitted from the Form S-1 to the extent relating to (a) the Neurotrope Group, (b) the Neurotrope Liabilities, (c) the Neurotrope Assets or (d) the substantive disclosure set forth in the Form S-1 relating to Neurotrope's board of directors' consideration of the Spin-Off, including the section entitled "Reasons for the Spin-Off".

"Neurotrope Group" means Neurotrope and each of its Subsidiaries, but excluding NBI.

"Neurotrope Indemnitees" has the meaning set forth in Section 6.02.

"Neurotrope Liabilities" means (i) all Liabilities of the Neurotrope Group, (ii) the Neurotrope Retained Liabilities, (iii) any obligations related to the Neurotrope Portion of any Shared Contract or (iv) any Liabilities determined by Neurotrope, in good faith, to be primarily related to the business or operations of the Neurotrope Business (unless otherwise expressly provided in this Agreement). Notwithstanding the foregoing, the Neurotrope Liabilities shall not include (a) any Liabilities governed by the TMA or (b) the NBI Liabilities.

"Neurotrope Marks" means the trademarks, trade names and service marks containing Neurotrope, Inc. or the abbreviations of Neurotrope owned by a member of the Neurotrope Group and all goodwill relating thereto, including those listed in Schedule XI.

"Neurotrope Portion" has the meaning set forth in Section 2.04.

"Neurotrope Retained Assets" means the Assets to be retained by the Neurotrope Group set forth on Schedule VI.

"Neurotrope Retained Liabilities" means the Liabilities to be retained by the Neurotrope Group set forth on Schedule VII.

"Neurotrope Welfare Plan" means each Welfare Plan sponsored or maintained by a member of the Neurotrope Group.

"Party" means either party hereto, and "Parties" means both parties hereto.

"Payables Transactions" means the intercompany payables transactions set forth on Schedule II to be settled as set forth on Schedule II.

"Person" means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability company, any other entity and any Governmental Authority.

"Pre-Separation Claims-Based Insurance Claim" means any claim made against NBI or Neurotrope Group and reported to the applicable insurer(s) on or prior to the Distribution Date in respect of a wrongful act or omission occurring on or prior to the Distribution Date that results in a Liability under a "claims-made-based" insurance policy of the Neurotrope Group in effect on or prior to the Distribution Date or any extended reporting period thereof.

"Pre-Separation Insurance Claim" means a (i) Pre-Separation Claims-Based Insurance Claim or (ii) Action (whether made prior to, on or following the Distribution Date) in respect of a Liability occurring on or prior to the Distribution Date under an "occurrence-based" insurance policy of any member of the Neurotrope Group in effect on or prior to the Distribution Date.

"Record Date" means the close of business on the date to be determined by the Neurotrope board of directors as the record date for determining the shares of Neurotrope Common Stock in respect of which shares of NBI Common Stock will be distributed pursuant to the Distribution.

"Record Holders" has the meaning set forth in Section 5.01(b).

"Retained Information" has the meaning set forth in Section 7.04.

"Salary Continuation Former Employee" means any former NBI Employee who was employed by NBI or a Subsidiary of NBI immediately prior to termination of his or her employment, is receiving salary continuation severance payments or separation payments and, during such period of continued payments, continues to be treated like an active Employee for purposes of participation in certain health and welfare plans.

"Securities Act" means the Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Security Interest" means any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer or other encumbrance of any nature whatsoever.

"Separation" means (a) any actions to be taken pursuant to Article II and (b) any other transfers of Assets and assumptions of Liabilities, in each case, between a member of one Group and a member of the other Group, provided for in this Agreement or in any Ancillary Agreement.

"Share Issuance" has the meaning set forth in Schedule I.

"Shared Contract" means any contract or agreement of any member of either Group that relates in any material respect to both the NBI Business and the Neurotrope Business, including the contracts and agreements set forth on Schedule X; provided that the Parties may, by mutual consent, elect to include in, or exclude from, this definition any contract or agreement.

"Special Dividend" has the meaning set forth in Schedule I.

"Spin-Off" means the Separation and the Distribution.

"Subsidiary" of any Person means any corporation or other organization whether incorporated or unincorporated of which at least a majority of the securities or interests having by the terms thereof ordinary voting power to elect at least a majority of the board of directors or others performing similar functions with respect to such corporation or other organization, is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

"Tax Opinion Representations" has the meaning set forth in the TMA.

"Taxes" has the meaning set forth in the TMA.

"Third-Party Claim" means any assertion by a Person (including any Governmental Authority) who is not a member of the Neurotrope Group or NBI of any claim, or the commencement by any such Person of any Action, against any member of the Neurotrope Group or NBI.

"Third-Party Proceeds" has the meaning set forth in Section 6.04(a).

"TMA" means the Tax Matters Agreement dated as of the date of this Agreement by and between Neurotrope and NBI.

"U.S. Intended Tax Treatment" has the meaning set forth in the TMA.

"Welfare Plan" means each Benefit Plan that provides life insurance, health care, dental care, accidental death and dismemberment insurance, disability, severance, vacation or other group welfare or fringe benefits.

"Workers' Compensation Event" means the event, injury, illness or condition giving rise to a workers' compensation claim with respect to a NBI Employee.

"Workers' Compensation Reimbursement Amounts" means the amount, if any, by which (i) the amount actually payable by the members of the Neurotrope Group in respect of the participation of NBI Employees, Salary Continuation Former Employees and Former NBI Employees in the Neurotrope Workers' Compensation Plan for any period prior to the Workers' Compensation Effective Date exceeds (ii) the amount that the Neurotrope Group charged NBI in respect of such period of participation.

ARTICLE II

THE SEPARATION

SECTION 2.01 Transfer of Assets and Assumption of Liabilities. (a) Prior to the Distribution and subject to Section 2.01(e), the Parties shall cause the Separation to be completed.

(b) Subject to Section 2.01(e), prior to the Distribution, the Parties shall, and shall cause their respective Group members to, execute such instruments of assignment and transfer and take such other corporate actions as are necessary to (i) transfer and convey to NBI all of the right, title and interest of the Neurotrope Group in, to and under all NBI Assets not already owned by NBI, (ii) transfer and convey to one or more members of the Neurotrope Group all of the right, title and interest of NBI in, to and under all Neurotrope Assets not already owned by the Neurotrope Group, (iii) cause NBI to assume all of the NBI Liabilities to the extent such Liabilities would otherwise remain obligations of any member of the Neurotrope Group and (iv) cause one or more members of the Neurotrope Group to assume all of the Neurotrope Liabilities to the extent such Liabilities would otherwise remain obligations of NBI. Notwithstanding anything to the contrary, neither Party shall be required to transfer any Information except as required by Article VII.

(c) In the event that it is discovered after the Distribution that there was an omission of (i) the transfer or conveyance by NBI or the acceptance or assumption by Neurotrope (or a member of the Neurotrope Group) of any Neurotrope Asset or Neurotrope Liability, as the case may be, (ii) the transfer or conveyance by Neurotrope (or a member of the Neurotrope Group) or the acceptance or assumption by NBI of any NBI Asset or NBI Liability, as the case may be, or (iii) the transfer or conveyance by one Party (or any other member of its Group) to, or the acceptance or assumption by, the other Party (or any other member of its Group) of any Asset or Liability, as the case may be, that, had the Parties given specific consideration to such Asset or Liability prior to the Distribution, would have otherwise been so transferred, conveyed, accepted or assumed, as the case may be, pursuant to this Agreement or the Ancillary Agreements, the Parties shall use reasonable best efforts to promptly effect such transfer, conveyance, acceptance or assumption of such Asset or Liability. Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.01(c) shall be treated by the Parties for all purposes as if it had occurred immediately prior to the Distribution, except as otherwise required by applicable Law or a Determination.

(d) In the event that it is discovered after the Distribution that there was (i) a transfer or conveyance by NBI or the acceptance or assumption by Neurotrope (or a member of the Neurotrope Group) of any NBI Asset or NBI Liability, as the case may be, or (ii) a transfer or conveyance by Neurotrope (or a member of the Neurotrope Group) or the acceptance or assumption by NBI of any Neurotrope Asset or Neurotrope Liability, as the case may be, the Parties shall use reasonable best efforts to promptly transfer or convey such Asset back to the transferring or conveying Party or to rescind any acceptance or assumption of such Liability, as the case may be. Any transfer or conveyance made or acceptance or assumption rescinded pursuant to this Section 2.01(d) shall be treated by the Parties for all purposes as if such Asset or Liability had never been originally transferred, conveyed, accepted or assumed, as the case may be, except as otherwise required by applicable Law or a Determination.

(e) To the extent that any transfer or conveyance of any Asset or acceptance or assumption of any Liability required by this Agreement to be so transferred, conveyed, accepted or assumed shall not have been completed prior to the Distribution, the Parties shall use reasonable best efforts to effect such transfer, conveyance, acceptance or assumption as promptly following the Distribution as shall be practicable. Nothing in this Agreement shall be deemed to require the transfer or conveyance of any Assets or the acceptance or assumption of any Liabilities which by their terms or operation of law cannot be so transferred, conveyed, accepted or assumed; provided, however, that the Parties shall use reasonable best efforts to obtain any necessary Consents for the transfer, conveyance, acceptance or assumption (as applicable) of all Assets and Liabilities required by this Agreement to be so transferred, conveyed, accepted or assumed. In the event that any such transfer, conveyance, acceptance or assumption (as applicable) has not been completed effective as of and after the Distribution, the Party retaining such Asset or Liability shall thereafter hold such Asset for the use and benefit of the Party entitled thereto (at the expense of the Party entitled thereto) and retain such Liability for the account, and at the expense, of the Party by whom such Liability should have been assumed or accepted pursuant to this Agreement, and take such other actions as may be reasonably requested by the Party to which such Asset should have been transferred or conveyed, or by whom such Liability should have been assumed or accepted, as the case may be, in order to place such Party, insofar as reasonably possible, in the same position as would have existed had such Asset or Liability been transferred, conveyed, accepted or assumed (as applicable) as contemplated by this Agreement, including possession, use, risk of loss, potential for gain and control over such Asset or Liability. As and when any such Asset or Liability becomes transferable, the Parties shall use reasonable best efforts to promptly effect such transfer, conveyance, acceptance or assumption (as applicable). Any transfer, conveyance, acceptance or assumption made pursuant to this Section 2.01(e) shall be treated by the Parties for all purposes as if it had occurred immediately prior to the Distribution, except as otherwise required by applicable Law or a Determination.

(f) The Party retaining any Asset or Liability due to the deferral of the transfer and conveyance of such Asset or the deferral of the acceptance and assumption of such Liability pursuant to this Section 2.01 or otherwise shall not be obligated by this Agreement, in connection with this Section 2.01, to expend any money or take any action that would require the expenditure of money unless and to the extent the Party entitled to such Asset or the Party intended to assume such Liability advances or agrees to reimburse it for the necessary funds.

SECTION 2.02 Certain Matters Governed Exclusively by Ancillary Agreements. Each of Neurotrope and NBI agrees on behalf of itself and the members of its Group that, except as explicitly provided in this Agreement or any Ancillary Agreement, the TMA shall exclusively govern all matters relating to Taxes between such parties.

SECTION 2.03 Termination of Agreements. (a) Except as set forth in Section 2.03(b) or as otherwise provided by the steps constituting the Separation, in furtherance of the releases and other provisions of Section 6.01, effective as of the Distribution, NBI, on the one hand, and Neurotrope and each other member of the Neurotrope Group, on the other hand, hereby terminate any and all agreements, arrangements, commitments and understandings, oral or written ("Intercompany Agreements"), including all intercompany accounts payable or accounts receivable ("Intercompany Accounts"), between such parties and in effect or accrued as of the Distribution. No such terminated Intercompany Agreement or Intercompany Account (including any provision thereof that purports to survive termination) shall be of any further force or effect after the Distribution Date. Each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing. The Parties, on behalf of the members of their respective Groups, hereby waive any advance notice provision or other termination requirements with respect to any Intercompany Agreement.

(b) The provisions of Section 2.03(a) shall not apply to any of the following Intercompany Agreements or Intercompany Accounts (or to any of the provisions thereof): (i) the Intercompany Agreements and Intercompany Accounts set forth in Schedule VIII; (ii) this Agreement and the Ancillary Agreements (and each other Intercompany Agreement or Intercompany Account expressly contemplated by this Agreement or any Ancillary Agreement to be entered into by either Party or any other member of its Group); (iii) any existing written Intercompany Agreement to provide services between NBI, on the one hand, and a member of the Neurotrope Group, on the other hand, that has been entered into in the ordinary course of business on an arm's-length basis, including outstanding operational intercompany trade receivables or payables incurred on such basis; (iv) any Intercompany Agreement to which any non-wholly owned Subsidiary of NBI or Neurotrope, as the case may be, is a party; (v) any other Intercompany Agreements or Intercompany Accounts that this Agreement or any Ancillary Agreement expressly contemplates will survive the Distribution Date; and (vi) any other Intercompany Agreements or Intercompany Accounts that, had the Parties given specific consideration to such Intercompany Agreements or Intercompany Accounts prior to the Distribution, would have been set forth in Schedule VIII as not to terminate as of the Distribution.

SECTION 2.04 Shared Contracts. The Parties shall, and shall cause the members of their respective Groups to, use their respective reasonable best efforts to work together (and, if necessary and desirable, to work with the third party to such Shared Contract) in an effort to divide, partially assign, modify and/or replicate (in whole or in part) the respective rights and obligations under and in respect of any Shared Contract, such that (a) NBI is the beneficiary of the rights and is responsible for the obligations related to that portion of such Shared Contract relating to the NBI Business (the "NBI Portion"), which rights shall be a NBI Asset and which obligations shall be a NBI Liability and (b) a member of the Neurotrope Group is the beneficiary of the rights and is responsible for the obligations related to such Shared Contract not relating to the NBI Business (the "Neurotrope Portion"), which rights shall be a Neurotrope Asset and which obligations shall be a Neurotrope Liability. If the Parties, or their respective Group members, as applicable, are not able to enter into an arrangement to formally divide, partially assign, modify and/or replicate such Shared Contract prior to the Distribution as contemplated by the previous sentence, then the Parties shall, and shall cause their respective Group members to, cooperate in any lawful arrangement to provide that, following the Distribution and until the earlier of five years after the Distribution Date and such time as the formal division, partial assignment, modification and/or replication of such Shared Contract as contemplated by the previous sentence is effected, NBI shall receive the interest in the benefits and obligations of the NBI Portion under such Shared Contract and a member of the Neurotrope Group shall receive the interest in the benefits and obligations of the Neurotrope Portion under such Shared Contract.

SECTION 2.05 Disclaimer of Representations and Warranties. Each of Neurotrope (on behalf of itself and each other member of the Neurotrope Group) and NBI understands and agrees that, except as expressly set forth in this Agreement, any Ancillary Agreement or the Tax Opinion Representations, no party to this Agreement, any Ancillary Agreement or any other agreement or document contemplated by this Agreement or any Ancillary Agreement is representing or warranting in any way as to any Assets or Liabilities transferred or assumed as contemplated hereby or thereby, as to the sufficiency of the Assets or Liabilities transferred or assumed hereby or thereby for the conduct and operations of the NBI Business or the Neurotrope Business, as applicable, as to any Governmental Approvals or other Consents required in connection therewith or in connection with any past transfers of the Assets or assumptions of the Liabilities, as to the value or freedom from any Security Interests of, or any other matter concerning, any Assets or Liabilities of such party, or as to the absence of any defenses or rights of setoff or freedom from counterclaim with respect to any claim or other Asset, including any accounts receivable, of any such Party, or as to the legal sufficiency of any assignment, document or instrument delivered hereunder to convey title to any Asset or thing of value upon the execution, delivery and filing hereof or thereof. Except as may expressly be set forth herein, any such Assets are being transferred on an "as is," "where is" basis and the respective transferees shall bear the economic and legal risks that (a) any conveyance shall prove to be insufficient to vest in the transferee good and marketable title, free and clear of any Security Interest, and (b) any necessary Governmental Approvals or other Consents are not obtained or that any requirements of Laws or judgments are not complied with.

SECTION 2.06 Allocation of Welfare Benefit Claims. (a) The members of the Neurotrope Group shall retain Liability and responsibility in accordance with the applicable Neurotrope Welfare Plan for all reimbursement claims (such as medical and dental claims) for expenses incurred and for all non-reimbursement claims (such as life insurance claims) incurred by NBI Employees and Salary Continuation Former Employees (and their respective dependents and beneficiaries) under such plans prior to the Establishment Date of the corresponding NBI Welfare Plan and (b) NBI shall retain Liability and responsibility in accordance with the NBI Welfare Plans for all reimbursement claims (such as medical and dental claims) for expenses incurred and for all non-reimbursement claims (such as life insurance claims) incurred by NBI Employees and Salary Continuation Former Employees (and their respective dependents and beneficiaries) on or following such Establishment Date. For purposes of this Section 2.06, a benefit claim shall be deemed to be incurred as follows: (A) when the event giving rise to the benefit under the applicable plan has occurred as set forth in the governing plan documents, if it is clear based on the governing documents of both the Neurotrope Welfare Plan and NBI Welfare Plans which plan should be responsible for the claim or if not, as follows: (B) (1) health, dental, vision, employee assistance program and prescription drug benefits (including in respect of any hospital confinement), upon provision of such services, materials or supplies; and (2) life, accidental death and dismemberment and business travel accident insurance benefits, upon the death, or other event giving rise to such benefits. The members of the Neurotrope Group shall retain Liability and responsibility in accordance with the applicable Neurotrope Welfare Plan for all reimbursement claims (such as medical and dental claims) for expenses incurred and for all non-reimbursement claims (such as life insurance claims) for individuals who, immediately prior to the applicable Establishment Date, are Former NBI Employees (and their dependents and beneficiaries), including any such Employee on long-term disability on the applicable Establishment Date.

SECTION 2.07 Workers' Compensation Claims. In the case of any workers' compensation claim of any NBI Employee who participates in a workers' compensation program of a member of the Neurotrope Group (each, a "Neurotrope Workers' Compensation Program"), such claim shall be covered (a) under such Neurotrope Workers' Compensation Program if the Workers' Compensation Event occurred prior to the earlier of the Distribution Date or [ ], 2020 (such date, as applicable, the "Workers' Compensation Effective Date"), and (b) under a workers' compensation program of NBI (each, a "NBI Workers' Compensation Program") if the Workers' Compensation Event occurs on or after the Workers' Compensation Effective Date. If the Workers' Compensation Event occurs over a period both preceding and following the Workers' Compensation Effective Date, the claim shall be covered jointly under the Neurotrope Workers' Compensation Program and the NBI Workers' Compensation Program and shall be equitably apportioned between them based upon the relative periods of time that the Workers' Compensation Event transpired preceding and following the Workers' Compensation Effective Date. The members of the Neurotrope Group shall retain Liability and responsibility in accordance with the Neurotrope Workers' Compensation Program for all covered workers' compensation claims incurred by individuals who, immediately prior to the Workers' Compensation Effective Date, are Former NBI Employees or Salary Continuation Former Employees, including any such Employee on long-term disability on the Workers' Compensation Effective Date. Notwithstanding any provisions of this Section 2.07, NBI shall be obligated to reimburse Neurotrope for the Worker's Compensation Reimbursement Amounts in accordance with Section 2.08.

SECTION 2.08 Reimbursements by NBI. Promptly following the end of each calendar quarter that ends following the Distribution, Neurotrope shall provide NBI with one or more invoices that set forth the aggregate Workers' Compensation Reimbursement Amounts incurred by a member of the Neurotrope Group during such calendar quarter. Within 20 days following NBI's receipt of such invoice, NBI shall notify Neurotrope in writing if NBI disagrees with any of the amounts set forth on such invoice and the reason for any such disagreement. If NBI does not timely notify Neurotrope of any such disagreement, Neurotrope's determination as set forth on such invoice shall be conclusive, final and binding. If NBI timely notifies Neurotrope of any such disagreement, an officer of each Party shall meet during the 30-day period following NBI's notification of disagreement and shall negotiate in good faith to resolve the dispute during such period, and the resolution of such disagreement reached by such officers shall be conclusive, final and binding. Within 60 days following the date such invoice becomes conclusive, final and binding, NBI shall pay Neurotrope an amount in cash equal to the aggregate amounts set forth on such invoice.

ARTICLE III

ACTIONS PENDING THE DISTRIBUTION

SECTION 3.01 Actions Prior to the Distribution. (a) Subject to the conditions specified in Section 3.02 and subject to Section 4.03, Neurotrope and NBI shall use reasonable best efforts to consummate the Distribution. Such efforts shall include taking the actions specified in this Section 3.01.

(b) Prior to the Distribution, Neurotrope shall mail the Form S-1 to the Record Holders.

(c) NBI shall prepare, file with the Commission and use its reasonable best efforts to cause to become effective any registration statements or amendments thereto required to effect the establishment of, or amendments to, any employee benefit and other plans necessary or appropriate in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

(d) Neurotrope and NBI shall take all such action as may be necessary or appropriate under the securities or blue sky laws of the states or other political subdivisions of the United States or of other foreign jurisdictions in connection with the Distribution.

(e) NBI shall prepare and file, and shall use reasonable best efforts to have approved prior to the Distribution, an application for the listing of the NBI Common Stock to be distributed in the Distribution on the over-the-counter market (the "OTC"), or, if applicable, Nasdaq, subject to official notice of distribution.

(f) Prior to the Distribution, Neurotrope shall duly elect the individuals listed as members of the NBI board of directors in the Form S-1, and such individuals shall be the members of the NBI board of directors effective as of immediately after the Distribution; provided, however, that to the extent required by any Law or requirement of the OTC, or, if applicable, Nasdaq, or any other national securities exchange, as applicable, one independent director shall be appointed by the existing board of directors of NBI and begin his or her term prior to the Distribution and shall serve on NBI's audit and finance committee, compensation committee and nominating and corporate governance committee.

(g) Prior to the Distribution, Neurotrope shall deliver or cause to be delivered to NBI resignations, effective as of immediately after the Distribution, of each individual who will be an employee of any member of the Neurotrope Group after the Distribution and who is an officer or director of NBI immediately prior to the Distribution.

(h) Immediately prior to the Distribution, the Amended and Restated Certificate of Incorporation and the Amended and Restated By-laws of NBI, each in substantially the form filed as an exhibit to the Form S-1, shall be in effect.

(i) Prior to the Distribution, NBI shall make capital and other expenditures and operate its cash management, accounts payable and receivables collection systems in the ordinary course of business consistent with prior practice except as required in connection with the transactions contemplated by this Agreement and Ancillary Agreements.

(j) Neurotrope and NBI shall, subject to Section 4.03, take all reasonable steps necessary and appropriate to cause the conditions set forth in Section 3.02 to be satisfied and to effect the Distribution on the Distribution Date.

SECTION 3.02 Conditions Precedent to Consummation of the Distribution. Subject to Section 4.03, following the consummation of the Merger and as soon as practicable after the date of this Agreement, the Parties shall use reasonable best efforts to satisfy the following conditions prior to the consummation of the Distribution. The obligations of the Parties to consummate the Distribution shall be conditioned on the satisfaction, or waiver by Neurotrope, of the following conditions:

(a) The board of directors of Neurotrope shall have authorized and approved the Separation and Distribution and not withdrawn such authorization and approval, and shall have declared the dividend of NBI Common Stock to Neurotrope shareholders.

(b) Each Ancillary Agreement shall have been executed by each party thereto.

(c) The Form S-1 shall have been declared effective by the Commission, no stop order suspending the effectiveness of the Form S-1 shall be in effect and no proceedings for such purpose shall be pending before or threatened by the Commission.

(d) The NBI Common Stock shall have been accepted for listing on the OTC or, if applicable, Nasdaq or another national securities exchange approved by Neurotrope, subject to official notice of distribution.

(e) Neurotrope shall have received the written opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., which shall remain in full force and effect, that, subject to the accuracy of and compliance with the relevant Tax Opinion Representations, (i) the Distribution should qualify for its U.S. Intended Tax Treatment and (ii) no "excess loss account" (within the meaning of Section 1.1502 of the Regulations) with respect to the NBI Common Stock should be taken into account as income or gain as a result of any step of the Separation or the Distribution.

(f) The Separation shall have been completed.

(g) No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Distribution shall be in effect, and no other event outside the control of Neurotrope shall have occurred or failed to occur that prevents the consummation of the Distribution.

(h) No other events or developments shall have occurred prior to the Distribution that, in the judgment of the board of directors of Neurotrope, would result in the Distribution having an adverse effect on Neurotrope or the shareholders of Neurotrope.

(i) The actions set forth in Sections 3.01(b), (f), (g) and (h) shall have been completed.

(j) NBI shall have delivered to Neurotrope a certificate signed by the Chief Financial Officer of NBI, dated as of the Distribution Date, certifying that NBI has complied with Section 3.01(i).

The foregoing conditions are for the sole benefit of Neurotrope and shall not give rise to or create any duty on the part of Neurotrope or the Neurotrope board of directors to waive or not waive such conditions or in any way limit the right of Neurotrope to terminate this Agreement as set forth in Article X or alter the consequences of any such termination from those specified in such Article. Any determination made by the Neurotrope board of directors prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.02 shall be conclusive.

ARTICLE IV

THE DISTRIBUTION

SECTION 4.01 The Distribution. (a) NBI shall cooperate with Neurotrope to accomplish the Distribution and shall, at the direction of Neurotrope, use its reasonable best efforts to promptly take any and all actions necessary or desirable to effect the Distribution. Neurotrope shall select any investment bank or manager in connection with the Distribution, as well as any financial printer, distribution agent and financial, legal, accounting and other advisors for Neurotrope. Neurotrope or NBI, as the case may be, will provide, or cause the applicable member of its Group to provide, to the Agent all share certificates and any information required in order to complete the Distribution.

(b) Subject to the terms and conditions set forth in this Agreement, (i) after completion of the Separation and on or prior to the Distribution Date, for the benefit of and distribution to the holders of certain of Neurotrope's equity securities (other than shares of restricted stock issued pursuant to Neurotrope equity plans) as of the Record Date ("Record Holders"), Neurotrope will deliver to the Agent all of the issued and outstanding shares of NBI Common Stock then owned by Neurotrope or any other member of the Neurotrope Group and book-entry authorizations for such shares and (ii) on the Distribution Date, Neurotrope shall instruct the Agent to distribute to each Record Holder (or such Record Holder's bank or brokerage firm on such Record Holder's behalf) electronically, by direct registration in book-entry form, the number of shares of NBI Common Stock to which such Record Holder is entitled based on a distribution ratio to be determined by Neurotrope in its sole discretion. The Distribution shall be effective at 11:59 p.m. New York City time on the Distribution Date. On or as soon as practicable after the Distribution Date, the Agent will mail to each Record Holder an account statement indicating the number of shares of NBI Common Stock that have been registered in book-entry form in the name of such Record Holder.

SECTION 4.02 Fractional Shares. The Agent and Neurotrope shall, as soon as practicable after the Distribution Date, (a) determine the number of whole shares and fractional shares of NBI Common Stock allocable to each Record Holder, (b) aggregate all such fractional shares into whole shares and sell the whole shares obtained thereby in open market transactions at then prevailing trading prices on behalf of holders who would otherwise be entitled to fractional share interests and (c) distribute to each such holder, or for the benefit of each beneficial owner, such holder's or owner's ratable share of the net proceeds of such sale, based upon the average gross selling price per share of NBI Common Stock after making appropriate deductions for any amount required to be withheld under applicable Tax Law and less any brokers' charges, commissions or transfer Taxes. The Agent, in its sole discretion, will determine the timing and method of selling such fractional shares, the selling price of such fractional shares and the broker-dealer through which such fractional shares will be sold; provided, however, that the designated broker-dealer is not an Affiliate of Neurotrope or NBI. Neither Neurotrope nor NBI will pay any interest on the proceeds from the sale of fractional shares.

SECTION 4.03 Sole Discretion of Neurotrope. Neurotrope shall, in its sole and absolute discretion, determine the Record Date, the Distribution Date and all terms of the Distribution, including the form, structure and terms of any transactions and/or offerings to effect the Distribution and the timing of and conditions to the consummation thereof. In addition and notwithstanding anything to the contrary set forth below, Neurotrope may at any time and from time to time until the Distribution decide to abandon the Distribution or modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of all or part of the Distribution.

ARTICLE V

MUTUAL RELEASES; INDEMNIFICATION

SECTION 5.01 Release of Pre-Distribution Claims. (a) Except as provided in Section 5.01(c) or elsewhere in this Agreement or the Ancillary Agreements, effective as of the Distribution, NBI does hereby, for itself, its respective Affiliates, to the extent it may legally do so, successors and assigns, and all Persons who at any time on or prior to the Distribution have been shareholders, directors, officers, agents or employees of NBI (in each case, in their respective capacities as such), remise, release and forever discharge Neurotrope and the other members of the Neurotrope Group, their respective Affiliates, successors and assigns, and all Persons who at any on or prior to the Distribution have been shareholders, directors, officers, agents or employees of any member of the Neurotrope Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all NBI Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution, including in connection with the Spin-Off and all other activities to implement the Spin-Off.

(b) Except as provided in Section 5.01(c) or elsewhere in this Agreement or the Ancillary Agreements, effective as of the Distribution, Neurotrope does hereby, for itself and each other member of the Neurotrope Group, their respective Affiliates, to the extent it may legally do so, successors and assigns, and all Persons who at any time on or prior to the Distribution have been shareholders, directors, officers, agents or employees of any member of the Neurotrope Group (in each case, in their respective capacities as such), remise, release and forever discharge NBI, its respective Affiliates, successors and assigns, and all Persons who at any time on or prior to the Distribution have been shareholders, directors, officers, agents or employees of any member of NBI (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Neurotrope Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Distribution, including in connection with the Spin-Off and all other activities to implement the Spin-Off.

(c) Nothing contained in Section 5.01(a) or (b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any Intercompany Agreement or Intercompany Account that is specified in Section 2.03(b) not to terminate as of the Distribution, in each case in accordance with its terms. Nothing contained in Section 5.01(a) or (b) shall release any Person from:

(i) any Liability provided in or resulting from any agreement among any members of the Neurotrope Group or NBI that is specified in Section 2.03(b) as not to terminate as of the Distribution, or any other Liability specified in such Section 2.03(b) as not to terminate as of the Distribution;

(ii) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any Ancillary Agreement;

(iii) any Liability provided in or resulting from any other agreement or understanding that is entered into after the Distribution between one Party (and/or a member of such Party's Group), on the one hand, and the other Party (and/or a member of such Party's Group), on the other hand;

(iv) any Liability that the Parties may have with respect to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement for claims brought against the Parties, the members of their respective Groups or any of their respective directors, officers, employees or agents, by third Persons, which Liability shall be governed by the provisions of this Article V or, if applicable, the appropriate provisions of the relevant Ancillary Agreement; or

(v) any Liability the release of which would result in the release of any Person not otherwise intended to be released pursuant to this Section 5.01.

(d) NBI shall not make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against Neurotrope or any other member of the Neurotrope Group, or any other Person released pursuant to Section 5.01(a), with respect to any Liabilities released pursuant to Section 5.01(a). Neurotrope shall not make, and shall not permit any other member of the Neurotrope Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification against NBI, or any other Person released pursuant to Section 5.01(b), with respect to any Liabilities released pursuant to Section 5.01(b).

(e) It is the intent of each of Neurotrope and NBI, by virtue of the provisions of this Section 5.01, to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Distribution Date, between or among NBI, on the one hand, and Neurotrope or any other member of the Neurotrope Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Distribution Date), except as set forth in Section 5.01(c) or elsewhere in this Agreement or in any Ancillary Agreement. At any time, at the request of the other Party, each Party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

SECTION 5.02 Indemnification by NBI. Subject to Section 5.04, NBI shall indemnify, defend and hold harmless Neurotrope each other member of the Neurotrope Group and each of their respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "Neurotrope Indemnitees"), from and against any and all Liabilities of the Neurotrope Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

(a) the NBI Liabilities, including the failure of NBI or any other Person to pay, perform or otherwise promptly discharge any NBI Liability in accordance with its terms;

(b) any breach by NBI of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate indemnification therein (which shall be controlling); and

(c) any breach by NBI of any of the representations and warranties made by NBI in Section 11.01(c).

SECTION 5.03 Indemnification by Neurotrope. Subject to Section 5.04, Neurotrope shall indemnify, defend and hold harmless NBI and each of its respective former and current directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "NBI Indemnitees"), from and against any and all Liabilities of the NBI Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

(a) the Neurotrope Liabilities, including the failure of Neurotrope or any other member of the Neurotrope Group or any other Person to pay, perform or otherwise promptly discharge any Neurotrope Liability in accordance with its terms;

(b) any breach by Neurotrope or any other member of the Neurotrope Group of this Agreement or any Ancillary Agreement unless such Ancillary Agreement expressly provides for separate indemnification therein (which shall be controlling); and

(c) any breach by Neurotrope of any of the representations and warranties made by Neurotrope on behalf of itself and the members of the Neurotrope Group in Section 11.01(c).

SECTION 5.04 Indemnification Obligations Net of Insurance Proceeds and Third-Party Proceeds.

(a) The Parties intend that any Liability subject to indemnification or reimbursement pursuant to this Agreement will be net of (i) Insurance Proceeds that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability or (ii) other amounts recovered from any third party that actually reduce the amount of, or are paid to the applicable Indemnitee in respect of, such Liability ("Third-Party Proceeds"). Accordingly, the amount that either Party (an "Indemnifying Party") is required to pay to any Person entitled to indemnification or reimbursement pursuant to this Agreement (an "Indemnitee") will be reduced by any Insurance Proceeds or Third-Party Proceeds theretofore actually recovered by or on behalf of the Indemnitee from a third party in respect of the related Liability. If an Indemnitee receives a payment required by this Agreement from an Indemnifying Party in respect of any Liability (an "Indemnity Payment") and subsequently receives Insurance Proceeds or Third-Party Proceeds in respect of such Liability, then the Indemnitee will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if such Insurance Proceeds or Third-Party Proceeds had been received, realized or recovered before the Indemnity Payment was made.

(b) An insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or have any subrogation rights with respect thereto by virtue of the indemnification provisions hereof, it being expressly understood and agreed that no insurer or any other third party shall be entitled to a "wind-fall" (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the indemnification provisions hereof. Each member of the Neurotrope Group and NBI shall use reasonable best efforts to seek to collect or recover any Insurance Proceeds and any Third-Party Proceeds to which such Person is entitled in connection with any Liability for which such Person seeks indemnification pursuant to this Article V; provided, however, that such Person's inability to collect or recover any such Insurance Proceeds or Third-Party Proceeds shall not limit the Indemnifying Party's obligations hereunder.

(c) The calculation of any Indemnity Payments required by this Agreement shall be subject to Section 5.04 of the TMA.

SECTION 5.05 Procedures for Indemnification of Third-Party Claims. (a) If an Indemnitee shall receive notice or otherwise learn of a Third-Party Claim with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnitee pursuant to this Agreement, such Indemnitee shall give such Indemnifying Party written notice thereof as soon as reasonably practicable, but no later than 30 days after becoming aware of such Third-Party Claim. Any such notice shall describe the Third-Party Claim in reasonable detail. Notwithstanding the foregoing, the failure of any Indemnitee or other Person to give notice as provided in this Section 5.05(a) shall not relieve the related Indemnifying Party of its obligations under this Article VI, except to the extent that such Indemnifying Party is actually prejudiced by such failure to give notice.

(b) The Indemnifying Party shall have the right, exercisable by written notice to the Indemnitee within 30 calendar days after receipt of notice from an Indemnitee in accordance with Section 5.05(a) (or sooner, if the nature of such Third-Party Claim so requires), to assume and conduct the defense of such Third-Party Claim in accordance with the limits set forth in this Agreement with counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnitee; provided, however, that (i) the defense of such Third-Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnitee, affect the Indemnitee or any of its controlled Affiliates in a materially adverse manner and (ii) the Third-Party Claim solely seeks (and continues to seek) monetary damages (the conditions set forth in clauses (i) and (ii), collectively, the "Litigation Conditions").

(c) If the Indemnifying Party elects not to assume the defense of a Third-Party Claim in accordance with this Agreement, or fails to notify an Indemnitee of its election as provided in Section 5.05(b), such Indemnitee may defend such Third-Party Claim at the cost and expense of the Indemnifying Party.

(d) If the Indemnifying Party elects to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnitees shall, subject to the terms of this Agreement, cooperate with the Indemnifying Party with respect to the defense of such Third-Party Claim.

(e) If the Indemnifying Party elects to assume the defense of a Third-Party Claim in accordance with the terms of this Agreement, the Indemnifying Party will not be liable for any additional legal expenses subsequently incurred by the Indemnitee in connection with the defense of the Third-Party Claim; provided, however, that if (i) the Litigation Conditions cease to be met or (ii) the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third-Party Claim, the Indemnitee may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnifying Party or the Indemnitee, as the case may be, shall have the right to participate in (but, subject to the prior sentence, not control), at its own expense, the defense of any Third-Party Claim that the other is defending as provided in this Agreement. In the event, however, that such Indemnitee reasonably determines that representation by counsel to the Indemnifying Party of both such Indemnifying Party and the Indemnitee could reasonably be expected to present such counsel with a conflict of interest, then the Indemnitee may employ separate counsel to represent or defend it in any such action or proceeding and the Indemnifying Party will pay the reasonable fees and expenses of such counsel.

(f) No Indemnifying Party shall consent to entry of any judgment or enter into any settlement of any Third-Party Claim without the consent of the applicable Indemnitee or Indemnitees; provided, however, that such Indemnitee(s) shall be required to consent to such entry of judgment or to such settlement that the Indemnifying Party may recommend if the judgment or settlement (i) contains no finding or admission of any violation of Law or any violation of the rights of any Person, (ii) involves only monetary relief which the Indemnifying Party has agreed to pay and (iii) includes a full and unconditional release of the Indemnitee. Notwithstanding the foregoing, in no event shall an Indemnitee be required to consent to any entry of judgment or settlement if the effect thereof is to permit any injunction, declaratory judgment, other order or other nonmonetary relief to be entered, directly or indirectly, against any Indemnitee.

(g) Whether or not the Indemnifying Party assumes the defense of a Third-Party Claim, no Indemnitee shall admit any liability with respect to, or settle, compromise or discharge, such Third-Party Claim without the Indemnifying Party's prior written consent (such consent not to be unreasonably withheld or delayed).

SECTION 5.06 Additional Matters. (a) Any claim on account of a Liability that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnitee to the related Indemnifying Party. Such Indemnifying Party shall have a period of 30 days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such 30-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment. If such Indemnifying Party does not respond within such 30-day period or rejects such claim in whole or in part, such Indemnitee shall be free to pursue such remedies as may be available to such Party as contemplated by this Agreement.

(b) In the event of payment by or on behalf of any Indemnifying Party to any Indemnitee in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnitee as to any events or circumstances in respect of which such Indemnitee may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnitee shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(c) In the event of an Action relating to a Liability that has been allocated to an Indemnifying Party pursuant to the terms of this Agreement or any Ancillary Agreement in which the Indemnifying Party is not a named defendant, if the Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant or add the Indemnifying Party as an additional named defendant, if at all practicable. If such substitution or addition cannot be achieved for any reason or is not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in this Section 6.06, the Indemnifying Party shall fully indemnify the named defendant against all reasonable costs of defending the Action (including court costs, sanctions imposed by a court, attorneys' fees, experts, fees and all other external expenses), the costs of any judgment or settlement and the cost of any interest or penalties relating to any judgment or settlement.

SECTION 5.07 Remedies Cumulative. The remedies provided in this Article V shall be cumulative and, subject to the provisions of Article IX, shall not preclude assertion by any Indemnitee of any other rights or the seeking of any and all other remedies against any Indemnifying Party.

SECTION 5.08 Survival of Indemnities. The rights and obligations of each of Neurotrope and NBI and their respective Indemnitees under this Article VI shall survive the sale or other transfer by any Party or its Affiliates of any Assets or businesses or the assignment by it of any Liabilities.

SECTION 5.09 Limitation on Liability. Except as may expressly be set forth in this Agreement, none of Neurotrope, NBI or any other member of either Group shall in any event have any Liability to the other or to any other member of the other's Group, or to any other Neurotrope Indemnitee or NBI Indemnitee, as applicable, under this Agreement (i) with respect to any matter to the extent that such Party seeking indemnification has engaged in any knowing violation of Law or fraud in connection therewith or (ii) for any indirect, special, punitive or consequential damages, whether or not caused by or resulting from negligence or breach of obligations hereunder and whether or not informed of the possibility of the existence of such damages; provided, however, that the provisions of this Section 5.09(ii) shall not limit an Indemnifying Party's indemnification obligations hereunder with respect to any Liability any Indemnitee may have to any third party not affiliated with any member of the Neurotrope Group or NBI for any indirect, special, punitive or consequential damages.

ARTICLE VI

ACCESS TO INFORMATION; CONFIDENTIALITY

SECTION 6.01 Agreement for Exchange of Information; Archives. (a) Except in the case of an adversarial Action or threatened adversarial Action by either Neurotrope or NBI or a Person or Persons in its Group against the other Party or a Person or Persons in its Group, and subject to Section 6.01(b), each of Neurotrope and NBI, on behalf of its respective Group, shall provide, or cause to be provided, to the other Party, at any time after the Distribution, as soon as reasonably practicable after written request therefor, any Information relating to time periods on or prior to the Distribution Date in the possession or under the control of such respective Group, which Neurotrope or NBI, or any member of its respective Group, as applicable, reasonably needs (i) to comply with reporting, disclosure, filing or other requirements imposed on Neurotrope or NBI, or any member of its respective Group, as applicable (including under applicable securities Laws), by any national securities exchange or any Governmental Authority having jurisdiction over Neurotrope or NBI, or any member of its respective Group, as applicable, (ii) for use in any other judicial, regulatory, administrative or other proceeding or in order to satisfy audit, accounting, regulatory, litigation or other similar requirements or (iii) to comply with its obligations under this Agreement or any Ancillary Agreement. The receiving Party shall use any Information received pursuant to this Section 6.01(a) solely to the extent reasonably necessary to satisfy the applicable obligations or requirements described in clause (i), (ii) or (iii) of the immediately preceding sentence.

(b) In the event that either Neurotrope or NBI determines that the exchange of any Information pursuant to Section 6.01(a) could be commercially detrimental, violate any Law or agreement or waive or jeopardize any attorney-client privilege or attorney work product protection, such Party shall not be required to provide access to or furnish such Information to the other Party; provided, however, that both Neurotrope and NBI shall take all commercially reasonable measures to permit the compliance with Section 6.01(a) in a manner that avoids any such harm or consequence. Both Neurotrope and NBI intend that any provision of access to or the furnishing of Information pursuant to this Section 7.01 that would otherwise be within the ambit of any legal privilege shall not operate as waiver of such privilege.

(c) Each of NBI and Neurotrope agrees, on behalf of itself and each member of the Group of which it is a member, not to disclose or otherwise waive any privilege or protection attaching to any privileged Information relating to a member of the other Group or relating to or arising in connection with the relationship between the Groups prior to the Distribution, without providing prompt written notice to and obtaining the prior written consent of the other (not to be unreasonably withheld or delayed).

(d) Neurotrope and NBI each agree that it will only process personal data provided to it by the other Group in accordance with all applicable privacy and data protection Law obligations and will implement and maintain at all times appropriate technical and organizational measures to protect such personal data against unauthorized or unlawful processing and accidental loss, destruction, damage, alteration and disclosure. In addition, each Party agrees to provide reasonable assistance to the other Party in respect of any obligations under privacy and data protection legislation affecting the disclosure of such personal data to the other Party and will not knowingly process such personal data in such a way to cause the other Party to violate any of its obligations under any applicable privacy and data protection legislation.

SECTION 6.02 Ownership of Information. Any Information owned by one Group that is provided to the requesting Party hereunder shall be deemed to remain the property of the providing Party. Except as specifically set forth herein, nothing herein shall be construed as granting or conferring rights of license or otherwise in any such Information.

SECTION 6.03 Compensation for Providing Information. Neurotrope and NBI shall reimburse each other for the reasonable costs, if any, in complying with a request for Information pursuant to this Article VI. Except as may be otherwise specifically provided elsewhere in this Agreement, such costs shall be computed in accordance with NBI's or Neurotrope's, as applicable, standard methodology and procedures.

SECTION 6.04 Record Retention. To facilitate the possible exchange of Information pursuant to this Article VI and other provisions of this Agreement, each Party shall use its reasonable best efforts to retain all Information in such Party's possession relating to the other Party or its businesses, Assets or Liabilities, this Agreement or the Ancillary Agreements (the "Retained Information") in accordance with its respective record retention policy as in effect on the date hereof or such longer or shorter period as required by Law, this Agreement or the Ancillary Agreements.

SECTION 6.05 Accounting Information. Without limiting the generality of Section 6.01 but subject to Section 6.01(b):

(a) Until the end of the first full fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards as required by Law for Neurotrope to prepare consolidated financial statements or complete a financial statement audit for any period during which the financial results of NBI were consolidated with those of Neurotrope), NBI shall use its reasonable best efforts to enable Neurotrope to meet its timetable for dissemination of its financial statements and to enable Neurotrope's auditors to timely complete their annual audit and quarterly reviews of financial statements. As part of such efforts, to the extent reasonably necessary for the preparation of financial statements or completing an audit or review of financial statements or an audit of internal control over financial reporting, (i) NBI shall authorize and direct its auditors to make available to Neurotrope's auditors, within a reasonable time prior to the date of Neurotrope's auditors' opinion or review report, both (x) the personnel who performed or will perform the annual audits and quarterly reviews of NBI and (y) work papers related to such annual audits and quarterly reviews, to enable Neurotrope's auditors to perform any procedures they consider reasonably necessary to take responsibility for the work of NBI's auditors as it relates to Neurotrope's auditors' opinion or report and (ii) until all governmental audits are complete, NBI shall provide reasonable access during normal business hours for Neurotrope's internal auditors, counsel and other designated representatives to (x) the premises of NBI and its Subsidiaries and all Information (and duplicating rights) within the knowledge, possession or control of NBI and its Subsidiaries and (y) the officers and employees of NBI and its Subsidiaries, so that Neurotrope may conduct reasonable audits relating to the financial statements provided by NBI and its Subsidiaries; provided, however, that such access shall not be unreasonably disruptive to the business and affairs of NBI.

(b) Until the end of the first full fiscal year occurring after the Distribution Date (and for a reasonable period of time afterwards or as required by Law), Neurotrope shall use its reasonable best efforts to enable NBI to meet its timetable for dissemination of its financial statements and to enable NBI's auditors to timely complete their annual audit and quarterly reviews of financial statements. As part of such efforts, to the extent reasonably necessary for the preparation of financial statements or completing an audit or review of financial statements or an audit of internal control over financial reporting, (i) Neurotrope shall authorize and direct its auditors to make available to NBI's auditors, within a reasonable time prior to the date of NBI's auditors' opinion or review report, both (x) the personnel who performed or will perform the annual audits and quarterly reviews of Neurotrope and (y) work papers related to such annual audits and quarterly reviews, to enable NBI's auditors to perform any procedures they consider reasonably necessary to take responsibility for the work of Neurotrope's auditors as it relates to NBI's auditors' opinion or report and (ii) until all governmental audits are complete, Neurotrope shall provide reasonable access during normal business hours for NBI's internal auditors, counsel and other designated representatives to (x) the premises of Neurotrope and its Subsidiaries and all Information (and duplicating rights) within the knowledge, possession or control of Neurotrope and its Subsidiaries and (y) the officers and employees of Neurotrope and its Subsidiaries, so that NBI may conduct reasonable audits relating to the financial statements provided by Neurotrope and its Subsidiaries; provided, however, that such access shall not be unreasonably disruptive to the business and affairs of the Neurotrope Group.

(c) In order to enable the principal executive officer(s) and principal financial officer(s) (as such terms are defined in the rules and regulations of the Commission) of Neurotrope to make any certifications required of them under Section 302 or 906 of the Sarbanes-Oxley Act of 2002, NBI shall, within a reasonable period of time following a request from Neurotrope in anticipation of filing such reports, cause its principal executive officer(s) and principal financial officer(s) to provide Neurotrope with certifications of such officers in support of the certifications of Neurotrope's principal executive officer(s) and principal financial officer(s) required under Section 302 or 906 of the Sarbanes-Oxley Act of 2002 with respect to Neurotrope's Quarterly Report on Form 10-Q filed with respect to the fiscal quarter during which the Distribution Date occurs (unless such quarter is the fourth fiscal quarter), each subsequent fiscal quarter through the third fiscal quarter of the year in which the Distribution Date occurs and Neurotrope's Annual Report on Form 10-K filed with respect to the fiscal year during which the Distribution Date occurs. Such certifications shall be provided in substantially the same form and manner as such NBI officers provided prior to the Distribution (reflecting any changes in certifications necessitated by the Spin- Off or any other transactions related thereto) or as otherwise agreed upon between Neurotrope and NBI.

SECTION 6.06 Limitations of Liability. Neither Neurotrope nor NBI shall have any Liability to the other Party in the event that any Information exchanged or provided pursuant to this Agreement that is an estimate or forecast, or that is based on an estimate or forecast, is found to be inaccurate in the absence of willful misconduct by the providing Person. Neither Neurotrope nor NBI shall have any Liability to the other Party if any Information is destroyed after reasonable best efforts by NBI or Neurotrope, as applicable, to comply with the provisions of Section 6.04.

SECTION 6.07 Production of Witnesses; Records; Cooperation. (a) After the Distribution Date and until the third anniversary thereof, except in the case of an adversarial Action or threatened adversarial Action by either Neurotrope or NBI or a Person or Persons in its Group against the other Party or a Person or Persons in its Group, each of Neurotrope and NBI shall take all reasonable steps to make available, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the Persons in its respective Group (whether as witnesses or otherwise) and any books, records or other documents within its control or that it otherwise has the ability to make available, to the extent that such Person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action or threatened or contemplated Action (including preparation for such Action) in which Neurotrope or NBI, as applicable, may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all reasonable out-of-pocket costs and expenses in connection therewith.

(b) Without limiting the foregoing, Neurotrope and NBI shall use their reasonable best efforts to cooperate and consult to the extent reasonably necessary with respect to any Actions or threatened or contemplated Actions, other than an adversarial Action against the other Group.

(c) The obligation of Neurotrope and NBI to make available former, current and future directors, officers, employees and other personnel and agents or provide witnesses and experts pursuant to this Section 6.07 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to make available employees and other officers without regard to whether such individual or the employer of such individual could assert a possible business conflict (subject to the exception set forth in the first sentence of Section 6.07(a)). Without limiting the foregoing, each of Neurotrope and NBI agrees that neither it nor any Person or Persons in its respective Group will take any adverse action against any employee of its Group based on such employee's provision of assistance or information to each other pursuant to this Section 6.07.

(d) Upon the reasonable request of Neurotrope or NBI, in connection with any Action contemplated by this Article VII, Neurotrope and NBI will enter into a mutually acceptable common interest agreement so as to maintain to the extent practicable any applicable attorney-client privilege or work product immunity of any member of either Group.

SECTION 6.08 Confidential Information. (a) Each of Neurotrope and NBI, on behalf of itself and each Person in its respective Group, shall hold, and cause its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives to hold, in strict confidence and not release or disclose, with at least the same degree of care, but no less than a reasonable degree of care, that it applies to its own confidential and proprietary information pursuant to policies in effect as of the Distribution Date, all Information concerning the other Group or its business that is either in its possession (including Information in its possession prior to the Distribution) or furnished by the other Group or its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives at any time pursuant to this Agreement, and shall not use any such Information other than for such purposes as shall be expressly permitted hereunder, except, in each case, to the extent that such Information is (i) in the public domain through no fault of any member of the Neurotrope Group or NBI, as applicable, or any of its respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives, (ii) later lawfully acquired from other sources by any of Neurotrope, NBI or its respective Group, employees, directors or agents, accountants, counsel and other advisors and representatives, as applicable, which sources are not themselves bound by a confidentiality obligation to the knowledge of any of Neurotrope, NBI or Persons in its respective Group, as applicable, (iii) independently generated without reference to any proprietary or confidential Information of the Neurotrope Group or NBI, as applicable, or (iv) required to be disclosed by Law; provided, however, that the Person required to disclose such Information gives the applicable Person prompt, and to the extent reasonably practicable, prior notice of such disclosure and an opportunity to contest such disclosure and shall use commercially reasonable efforts to cooperate, at the expense of the requesting Person, in seeking any reasonable protective arrangements requested by such Person. In the event that such appropriate protective order or other remedy is not obtained, the Person that is required to disclose such Information shall furnish, or cause to be furnished, only that portion of such Information that is legally required to be disclosed and shall take commercially reasonable steps to ensure that confidential treatment is accorded such Information.

Notwithstanding the foregoing, each of Neurotrope and NBI may release or disclose, or permit to be released or disclosed, any such Information concerning the other Group (x) to their respective directors, officers, employees, agents, accountants, counsel and other advisors and representatives who need to know such Information (who shall be advised of the obligations hereunder with respect to such Information), and (y) to any nationally recognized statistical rating organization as it reasonably deems necessary, solely for the purpose of obtaining a rating of securities or other debt instruments upon normal terms and conditions; provided, however, that the Party whose Information is being disclosed or released to such rating organization is promptly notified thereof.

(b) Without limiting the foregoing, when any Information concerning the other Group or its business is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, each of Neurotrope and NBI will, promptly after request of the other Party, either return all Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or certify to the other Party, as applicable, that it has destroyed such Information (and used commercially reasonable efforts to destroy all such Information electronically preserved or recorded within any computerized data storage device or component (including any hard-drive or database)).

ARTICLE VII

INSURANCE

SECTION 7.01 Insurance. (a) Until and including the Distribution Date, Neurotrope shall (i) cause NBI and its respective employees, officers and directors to continue to be covered as insured parties under Neurotrope's policies of insurance in a manner which is no less favorable than the coverage provided for the Neurotrope Group and (ii) permit NBI and its respective employees, officers and directors to submit claims arising from or relating to facts, circumstances, events or matters that occurred on or prior to the Distribution Date to the extent permitted under such policies. With respect to policies currently procured by NBI for its sole benefit, NBI shall continue to maintain such insurance coverage through the Distribution Date in a manner no less favorable than currently provided. Without limiting any of the rights or obligations of the parties pursuant to Section 7.01(b), Neurotrope and NBI acknowledge that, as of immediately after the Distribution Date, and upon confirmation that NBI has secured replacement coverage, Neurotrope intends to take such action as it may deem necessary or desirable to NBI and its respective employees, officers and directors as insured parties under any policy of insurance issued to any member of the Neurotrope Group by any insurance carrier effective immediately following the Distribution Date.

NBI will not be entitled following the Distribution Date, absent mutual agreement otherwise, to make any claims for insurance thereunder to the extent such claims are based upon facts, circumstances, events or matters occurring after the Distribution Date or to the extent any claims are made pursuant to any Neurotrope claims-made policies after the Distribution Date. No member of the Neurotrope Group shall be deemed to have made any representation or warranty as to the availability of any coverage under any such insurance policy. Notwithstanding the foregoing, Neurotrope shall, and shall cause the other members of the Neurotrope Group to, use reasonable best efforts to take such actions as are necessary to cause all insurance policies of the Neurotrope Group that immediately prior to the Distribution provide coverage to or with respect to NBI and its respective employees, officers and directors to continue to provide such coverage with respect to acts, omissions or events occurring prior to the Distribution or claims made prior to the Distribution in accordance with their terms as if the Distribution had not occurred and Neurotrope shall provide, and shall cause other members of the Neurotrope Group to provide, such cooperation as is reasonably requested by NBI in order for NBI to have in effect after the Distribution Date such new claims-made policies as NBI deems appropriate with respect to claims made after the Distribution Date. In no event shall Neurotrope be required, at its own expense or with any detriment to Neurotrope, to extend or maintain coverage under claims-made policies with respect to any claims first made against NBI or first reported to the insurer after the Distribution Date.

(b) After the Distribution Date, NBI shall have the right to participate with Neurotrope to resolve Pre- Separation Insurance Claims under the applicable Neurotrope insurance policies up to the full extent of the applicable and available limits of Liability of such policy. Neurotrope or NBI, as the case may be, shall have primary control over those Pre-Separation Insurance Claims for which the Neurotrope Group or NBI, respectively, bears the underlying loss, subject to the terms and conditions of the relevant policy of insurance governing such control. If NBI is unable to assert a Pre-Separation Insurance Claim because it is no longer an "insured" under a Neurotrope insurance policy, then Neurotrope shall assert such claim in its own name and deliver the Insurance Proceeds to NBI. Any Insurance Proceeds received by the Neurotrope Group for NBI shall be for the benefit of NBI. Any Insurance Proceeds received for the benefit of both the Neurotrope Group and NBI shall be distributed pro rata based on the respective share of the underlying loss.

(c) With respect to Pre-Separation Insurance Claims, whether or not known or reported on or prior to the Distribution Date, NBI shall report as soon as practicable such claims arising from the NBI Business directly to the applicable insurer(s) and to Neurotrope, and NBI shall, individually, and not jointly, assume and be responsible for the reimbursement Liability (i.e., deductible or retention) related to its portion of the Liability and/or any retrospective premium charges associated with the workers compensation, automobile and general liability claims so submitted by it to the extent such amounts payable by Neurotrope after the Distribution Date are greater than they otherwise would have been if such amounts had been based on the most recent actuarial projections established for such claims immediately prior to the Distribution, unless otherwise agreed in writing by Neurotrope. Neurotrope shall, and shall cause each member of the Neurotrope Group to, cooperate and assist NBI with respect to such claims and shall arrange for NBI to post any such collateral in respect of the reimbursement obligations as may reasonably be requested by the insurers. In addition, Neurotrope shall provide information to NBI on claims history including quarterly loss reports and annual actuarial claims reports for the previous five policy terms. Neurotrope agrees that Pre-Separation Insurance Claims of NBI shall receive the same priority as Pre-Separation Insurance Claims of members of the Neurotrope Group and be treated equitably in all respects, including in connection with deductibles, retentions, coinsurance and retrospective premium charges.

(d) Neurotrope shall not be liable to NBI for claims, or portions of claims, not reimbursed by insurers under any policy for any reason, including coinsurance provisions, deductibles, quota share deductibles, self-insured retentions, bankruptcy or insolvency of any insurance carrier(s), policy limitations or restrictions (including exhaustion of limits), any coverage disputes, any failure to timely file a claim by any member of the Neurotrope Group or NBI or any defect in such claim or its processing. In the event that insurable claims of both Neurotrope and NBI (or the members of their respective Groups) exist relating to the same occurrence, the Parties shall jointly defend and waive any conflict of interest necessary to the conduct of the joint defense and shall not settle or compromise any such claim without the consent of the other (which consent shall not be unreasonably withheld or delayed subject to the terms and conditions of the applicable insurance policy). Nothing in this Section 7.01 shall be construed to limit or otherwise alter in any way the obligations of the Parties, including those created by this Agreement, by operation of Law or otherwise.

(e) After the Distribution Date, to the extent that any claims have been duly reported on or before the Distribution Date under the directors and officers liability insurance policies or fiduciary liability insurance policies (collectively, "D&O Policies") maintained by members of the Neurotrope Group, Neurotrope shall not, and shall cause the members of the Neurotrope Group not to, take any action that would limit the coverage of the individuals who acted as directors or officers of NBI on or prior to the Distribution Date under any D&O Policies maintained by the members of the Neurotrope Group. Neurotrope shall, and shall cause members of the Neurotrope Group to, reasonably cooperate with the individuals who acted as directors and officers of NBI on or prior to the Distribution Date in their pursuit of any coverage claims under such D&O Policies which could inure to the benefit of such individuals. Neurotrope shall, and shall cause members of the Neurotrope Group to, allow NBI and its agents and representatives, upon reasonable prior notice and during regular business hours, to examine and make copies of the relevant D&O Policies maintained by Neurotrope and members of the Neurotrope Group pursuant to this Section 8.01(e). Neurotrope shall provide, and shall cause other members of the Neurotrope Group to provide, such cooperation as is reasonably requested by NBI in order for NBI to have in effect after the Distribution Date such new D&O Policies as NBI deems appropriate with respect to claims reported after the Distribution Date. Except as provided in this Section 8.01(e), the Neurotrope Group may, at any time, without liability or obligation to NBI, amend, commute, terminate, buy-out, extinguish liability under or otherwise modify any "occurrence-based" insurance policy or "claims-made-based" insurance policy (and such claims will be subject to any such amendments, commutations, terminations, buy-outs, extinguishments and modifications); provided, however, that Neurotrope will immediately notify NBI of any termination of any insurance policy.

(f) The parties shall use reasonable best efforts to cooperate with respect to the various insurance matters contemplated by this Section 7.01.

ARTICLE VIII

INTELLECTUAL PROPERTY

SECTION 8.01 Consent To Use Trademarks And Duty To Cooperate. (a) NBI consents to the use and registration of the Neurotrope Marks in the Neurotrope Business by Neurotrope and its Affiliates and their respective licensees. The consent in this Section 8.01(a) includes consent to the Neurotrope Group's and such licensees' use and registration of names, trademarks and domain names that include, in whole or in part, "Neurotrope Bioscience, Inc." or the abbreviation "NBI".

(b) Neurotrope consents (on behalf of itself and each other member of the Neurotrope Group) to the use and registration of the NBI Marks in the NBI Business by NBI and its Affiliates and their respective licensees. The consent in this Section 8.01(b) includes consent to NBI's and such licensees' use and registration of names, trademarks and domain names that include, in whole or in part, "NBI".

(c) NBI agrees that it will not oppose or petition to cancel, or assist another party in opposing or petitioning to cancel, an application or registration by Neurotrope or its Affiliates or their respective licensees for a Neurotrope Mark that is consistent with the use to which NBI has consented under this Agreement. Neurotrope agrees that it will not, and agrees to cause its Subsidiaries not to, oppose or petition to cancel, or assist another party in opposing or petitioning to cancel, an application or registration by NBI or its Affiliates or their respective licensees for a NBI Mark that is consistent with the use to which Neurotrope has consented under this Agreement.

(d) NBI hereby acknowledges Neurotrope's right, title and interest in and to the Neurotrope Marks, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest within the Neurotrope Business or with respect to goods or services provided in connection with the Neurotrope Business. NBI agrees not to use, and agrees to cause its Subsidiaries not to use, the Neurotrope Marks, or any names, trademarks or domain names that incorporate the Neurotrope Marks for any purpose.

In the event that Neurotrope Marks prominently appear on any business or promotional materials used by NBI or its Affiliates within the NBI Business, NBI shall remove and cease using such prominently appearing marks as soon as reasonably practical following the Distribution Date but in any event within 90 days of the Distribution Date or, with respect to products for sale produced or published prior to the Distribution Date on which any Neurotrope Mark prominently appears, within six months of the Distribution Date; provided that NBI shall promptly arrange for the destruction of any such products for sale produced or published prior to the Distribution Date that remain unsold following such six-month period and on which any Neurotrope Mark prominently appears.

(e) Neurotrope hereby acknowledges (on behalf of itself and each other member of the Neurotrope Group) NBI's right, title and interest in and to the NBI Marks, and will not in any way, directly or indirectly, do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest within the NBI Business or with respect to goods or services provided in connection with the NBI Business. Neurotrope agrees not to use, and agrees to cause its Subsidiaries not to use, the NBI Marks, except where the use is a use, otherwise than as a mark, of the party's individual name in its own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or their geographic origin. Without limiting the foregoing, neither Neurotrope nor its Affiliates shall use the name or mark NBI for any brand, mark, title or any source identifiers.

In the event that NBI Marks prominently appear on any business or promotional materials used by Neurotrope or its Affiliates within the Neurotrope Business, Neurotrope shall remove and cease using such prominently appearing marks as soon as reasonably practical following the Distribution Date but in any event within 90 days of the Distribution Date or, with respect to products for sale produced or published prior to the Distribution Date on which any NBI Mark prominently appears, within six months of the Distribution Date; provided that Neurotrope shall promptly arrange for the destruction of any such products for sale produced or published prior to the Distribution Date that remain unsold following such six-month period and on which any NBI Mark prominently appears.

(f) Each of Neurotrope and NBI believes its respective marks are sufficiently distinctive and different to ensure consumers will not be confused as to source or sponsorship, and each agrees to employ its reasonable best efforts to use its respective marks in a manner that does not cause actual confusion or a likelihood of confusion as to source or sponsorship of its respective goods or services in its respective channels of trade. If, despite Neurotrope's and NBI's reasonable best efforts, such actual confusion shall be brought to the attention of either such party, such parties agree to consult regarding steps to be taken to mitigate or correct such actual confusion.

(g) Each of Neurotrope and NBI shall be responsible for policing, protecting and enforcing its own trademarks, trade names and service marks. Notwithstanding the forgoing, each of Neurotrope and NBI will promptly give notice to the other of any known, actual or threatened, use or infringement that may cause consumers to be confused as to source or sponsorship between such parties.

(h) If a trademark office cites Neurotrope's prior NBI formative trademark against NBI's trademark application for a NBI formative mark, or NBI's prior NBI formative trademark against Neurotrope's NBI trademark application, the owner of the prior trademark will cooperate with the applicant and provide consent to the registration of the applied-for trademark, provided the applied-for trademark application is not contrary to the terms of this Article IX.

SECTION 8.02 Domain Names. (a) At the expense of NBI, each of Neurotrope and NBI will use commercially reasonable efforts to ensure the Domain Names in Schedule XIII are: (i) listed with NBI or, on behalf of NBI, appropriate local counsel or other designated agent of NBI as the owner/registrant; (ii) managed by NBI in a NBI-controlled registrar account; and (iii) placed on NBI domain name servers, in each case within six months following the Distribution Date.

(b) At the expense of NBI, NBI will use commercially reasonable efforts to identify and disable all uses of the Domain Names identified in Schedule XIV within six months following the Distribution Date, and will notify Neurotrope that use has ceased. Until the earlier of (x) the receipt of such notice from NBI and (y) the date that is six months following the Distribution Date, Neurotrope will use commercially reasonable efforts to ensure that the Domain Names in Schedule XIV are: (i) listed with Neurotrope or, on behalf of Neurotrope, appropriate local counsel or other designated agent of Neurotrope as the owner/registrant; (ii) managed by Neurotrope in a Neurotrope-controlled registrar account; (iii) maintained as active registrations (i.e., not allowed to expire); and (iv) not changed in any aspect from current usage.

(c) Upon the earlier of (x) the receipt of the notice from NBI required under Section 9.02(b) and (y) the date that is six months following the Distribution Date, Neurotrope will: (i) use commercially reasonable efforts to ensure that the Domain Names identified in Schedule XIV are no longer publicly-facing by removing them from active domain name servers; and (ii) allow the Domain Names identified in Schedule XIV to lapse; provided that, rather than allowing such Domain Names to lapse or following such lapse, Neurotrope may, in its sole discretion, repurpose non-biopharmaceutical-focused Domain Names identified in Schedule XIV (e.g., [ ].com) for Neurotrope's and its Affiliates' own use.

SECTION 8.03 Scope. The geographic scope of this Article VIII shall be worldwide.

SECTION 8.04 Licenses; Assignments. Any license, assignments or other transfer of rights in the Neurotrope Marks, the NBI Marks or the Domain Names to a third party shall be accompanied by the restrictions provided in this Article VIII.

ARTICLE IX

FURTHER ASSURANCES AND ADDITIONAL COVENANTS

SECTION 9.01 Further Assurances and Additional Covenants. (a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall, subject to Section 4.03, use reasonable best efforts, prior to, on and after the Distribution Date, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable Laws and agreements to consummate and make effective the transactions contemplated by this Agreement.

(b) Without limiting the foregoing, prior to, on and after the Distribution Date, each Party shall cooperate with the other Party, without any further consideration, but at the expense of the requesting Party, (i) to execute and deliver, or use reasonable best efforts to execute and deliver, or cause to be executed and delivered, all instruments, including any instruments of conveyance, assignment and transfer as such Party may reasonably be requested to execute and deliver by the other Party, (ii) to make, or cause to be made, all filings with, and to obtain, or cause to be obtained, all Consents of any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument, (iii) to obtain, or cause to be obtained, any Governmental Approvals or other Consents required to effect the Spin-Off and (iv) to take, or cause to be taken, all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and any transfers of Assets or assignments and assumptions of Liabilities hereunder and the other transactions contemplated hereby.

(c) On or prior to the Distribution Date, Neurotrope and NBI, in their respective capacities as direct and indirect shareholders of their respective Subsidiaries, shall each ratify any actions that are reasonably necessary or desirable to be taken by NBI or any other Subsidiary of Neurotrope, as the case may be, to effectuate the transactions contemplated by this Agreement.

(d) Prior to the Distribution, if either Party identifies any commercial or other service that is needed to ensure a smooth and orderly transition of its business in connection with the consummation of the transactions contemplated hereby, and that is not otherwise governed by the provisions of this Agreement or any Ancillary Agreement, the Parties will cooperate in determining whether there is a mutually acceptable arm's-length basis on which the other Party will provide such service.

(e) Neurotrope and NBI shall settle the Payables Transactions in accordance with Schedule II. As soon as reasonably possible following the Distribution Date, the Parties agree to determine and settle the final amounts of the Payables Transactions to the extent such amounts have not previously been settled.

ARTICLE X

TERMINATION

SECTION 10.01 Termination. This Agreement may be terminated by Neurotrope at any time, in its sole discretion, only upon the abandonment of the Merger and prior to the Distribution.

SECTION 10.02 Effect of Termination. In the event of any termination of this Agreement prior to the Distribution, neither Party (nor any of its directors or officers) shall have any Liability or further obligation to the other Party under this Agreement or the Ancillary Agreements.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01 Counterparts; Entire Agreement; Corporate Power.

(a) This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be executed by facsimile or PDF signature and a facsimile or PDF signature shall constitute an original for all purposes.

(b) This Agreement, the Ancillary Agreements and the Appendices, Exhibits and Schedules hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties with respect to the subject matter hereof other than those set forth or referred to herein or therein.

(c) Neurotrope represents on behalf of itself and each other member of the Neurotrope Group, and NBI represents on behalf of itself, as follows:

(i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform each of this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(ii) this Agreement and each Ancillary Agreement to which it is a party has been (or, in the case of any Ancillary Agreement, will be on or prior to the Distribution Date) duly executed and delivered by it and constitutes, or will constitute, a valid and binding agreement of it enforceable in accordance with the terms thereof.

SECTION 11.02 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each Party irrevocably consents to the exclusive jurisdiction, forum and venue of the Commercial Division of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York over any and all claims, disputes, controversies or disagreements between the Parties or any of their respective Subsidiaries, Affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby or thereby.

SECTION 11.03 Assignability. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either Party without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing, either Party may assign this Agreement without consent in connection with (a) a merger transaction in which such Party is not the surviving entity and the surviving entity acquires or assumes all or substantially all of such Party's Assets, or (b) the sale of all or substantially all of such Party's Assets; provided, however, that the assignee expressly assumes in writing all of the obligations of the assigning Party under this Agreement, and the assigning Party provides written notice and evidence of such assignment and assumption to the non-assigning Party. No assignment permitted by this Section 12.03 shall release the assigning Party from liability for the full performance of its obligations under this Agreement.

SECTION 11.04 Third-Party Beneficiaries. Except for the indemnification rights under this Agreement of any Neurotrope Indemnitee or NBI Indemnitee in their respective capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to confer upon any Person except the Parties hereto any rights or remedies hereunder and (b) there are no third-party beneficiaries of this Agreement and this Agreement shall not provide any third person with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

SECTION 11.05 Notices. All notices or other communications under this Agreement shall be in writing and shall be deemed to be duly given when (a) delivered in person, (b) on the date received, if sent by a nationally recognized delivery or courier service or (c) upon the earlier of confirmed receipt or the fifth business day following the date of mailing if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Neurotrope (prior to Closing), to:

Neurotrope, Inc.
1185 Avenue of the Americas, 3rd Floor
New York, New York, 10036
Attn: General Counsel

with a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue
New York, NY 10017
Attn: Kenneth Koch

If to Neurotrope (after Closing), to:

Metuchen Pharmaceuticals, LLC
200 U.S. 9, Ste 500
Manalapan Township, NJ 07726
Attn: [ ]

With a copy to:

Morgan Lewis & Bockius LLP
1111 Pennsylvania Ave NW
Washington, DC 20004
Attn: Andrew Ray

If to NBI, to:

Neurotrope Bioscience, Inc.
1185 Avenue of the Americas, 3rd Floor
New York, New York, 10036
Attn: Chief Financial Officer

Either Party may, by notice to the other Party, change the address to which such notices are to be given.

SECTION 11.06 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

SECTION 11.07 Publicity. Each of Neurotrope and NBI shall consult with the other prior to issuing, and shall, subject to the requirements of Section 6.08, provide the other Party the opportunity to review and comment upon, any press releases or other public statements in connection with the Spin-Off or any of the other transactions contemplated hereby and prior to making any filings with any Governmental Authority or national securities exchange with respect thereto (including the Form S-1, the Parties' respective Current Reports on Form 8-K to be filed on the Distribution Date, the Parties' respective Quarterly Reports on Form 10-Q filed with respect to the fiscal quarter during which the Distribution Date occurs, or if such quarter is the fourth fiscal quarter, the Parties' respective Annual Reports on Form 10-K filed with respect to the fiscal year during which the Distribution Date occurs (each such Quarterly Report on Form 10-Q or Annual Report on Form 10-K, a "First Post-Distribution Report")). Each Party's obligations pursuant to this Section 11.07 shall terminate on the date on which such Party's First Post-Distribution Report is filed with the Commission.

SECTION 11.08 Expenses. Except as expressly set forth in this Agreement or in any Ancillary Agreement, all third-party fees, costs and expenses paid or incurred in connection with the Spin-Off will be paid by the Party incurring such fees or expenses, whether or not the Distribution is consummated, or as otherwise agreed by the Parties. For the avoidance of doubt, Neurotrope shall bear the costs and expenses directly related to the mailing of the Form S-1 to Neurotrope shareholders and the fees and expenses of the Agent in connection with the Distribution and NBI shall bear the fees and expenses of Toppan Printing Co., Ltd. in connection with the Spin-Off, the fees and expenses of any accounting or legal advisors retained by NBI, the fees of B. Riley Financial Inc. in connection with the application and listing of the NBI Common Stock and the fees of the Commission in connection with any filing by NBI.

SECTION 11.09 Headings. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 11.10 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants in this Agreement and the liabilities for the breach of any obligations in this Agreement shall survive the Spin-Off and shall remain in full force and effect.

SECTION 11.11 Waivers of Default. No failure or delay of any Party (or the applicable member of its Group) in exercising any right or remedy under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Waiver by any Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default.

SECTION 11.12 Specific Performance. Subject to Section 4.03 and notwithstanding the procedures set forth in Article IX, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the affected Party shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The other Party shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. The Parties agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived.

SECTION 11.13 Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by any Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of each Party.

SECTION 11.14 Interpretation. Words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires. The terms "hereof," "herein" and "herewith" and words of similar import, unless otherwise stated, shall be construed to refer to this Agreement as a whole (including all of the schedules hereto) and not to any particular provision of this Agreement. Article, Section or Schedule references are to the articles, sections and schedules of or to this Agreement unless otherwise specified. Any capitalized terms used in any Schedule to this Agreement or to any Ancillary Agreement but not otherwise defined therein shall have the meaning as defined in this Agreement or the Ancillary Agreement to which such Schedule is attached, as applicable. Any reference herein to this Agreement, unless otherwise stated, shall be construed to refer to this Agreement as amended, supplemented or otherwise modified from time to time, as permitted by Section 11.13. The word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless the context otherwise requires or unless otherwise specified. The word "or" shall not be exclusive.

IN WITNESS WHEREOF, the Parties have caused this Separation and Distribution Agreement to be executed by their duly authorized representatives.

Neurotrope, Inc.

By _____
Name:
Title:

Neurotrope Bioscience, Inc.

By _____
Name:
Title:

Exhibit 2.9

This TAX MATTERS AGREEMENT (this "Agreement"), dated as of [ ], 2020, by and between Neurotrope Inc., a Nevada corporation ("Neurotrope"), and Neurotrope Bioscience, Inc., a Delaware corporation ("SpinCo" and, together with Neurotrope, the "Parties") shall become effective as of the Distribution (as defined below). Capitalized terms used in this Agreement and not defined herein shall have the meanings ascribed to such terms in the Separation and Distribution Agreement dated as of the date of this Agreement by and between Neurotrope and SpinCo, including the Schedules thereto (the "Separation Agreement").

W I T N E S S E T H:

WHEREAS, SpinCo is a wholly-owned subsidiary of Neurotrope and a member of its consolidated group;

WHEREAS, Neurotrope entered into an Agreement and Plan of Merger dated as of May 17, 2020, 2020 (the "Merger Agreement"), by and among Petros Pharmaceuticals, Inc., a Delaware corporation ("Parent"), PN Merger Sub 1, LLC, a Delaware limited liability company and direct wholly owned subsidiary of Parent, PM Merger Sub 2, Inc., a Nevada corporation ("Merger Sub 2"), Neurotrope, and Metuchen Pharmaceuticals LLC, a Delaware limited liability company (the "Company"), as amended, pursuant to which, among other things, (i) Merger Sub 1 will merge with and into the Company with the Company surviving as the surviving limited liability company (the "Metuchen Merger"), and (ii) Merger Sub 2 will merge with and into Neurotrope with Neurotrope surviving as the surviving corporation (the "Neurotrope Merger" and together with the Metuchen Merger, the "Mergers"), all upon the terms and subject to the conditions set forth in the Merger Agreement;

WHEREAS, pursuant to the Separation Agreement, following the Mergers, Neurotrope shall distribute all of the shares of SpinCo (the "Distribution") to those shareholders of Neurotrope that were shareholders of the Neurotrope as of [ ] prior to the Merger; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I

Definitions

SECTION 1.01 Definition of Terms. The following terms shall have the following meanings. Capitalized terms used but not defined in this Agreement shall have the meanings ascribed to them in the Separation Agreement.

"Agreement" has the meaning set forth in the preamble.

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

"Company" has the meaning set forth in the recitals.

"Determination" means (i) any final determination of liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise (including the expiration of a statute of limitations or period for the filing of claims for refunds, amended Tax Returns or appeals from adverse determinations), including a "determination" as defined in Section 1313(a) of the Code or execution of an IRS Form 870-AD, or (ii) the payment of Tax by a Party (or its Subsidiary) that is responsible for payment of that Tax under applicable Law, with respect to any item disallowed or adjusted by a Taxing Authority, as long as the responsible Party determines that no action should be taken to recoup that payment and the other Party agrees.

"Distribution" has the meaning set forth in the recitals.

"Indemnifying Party" means a Party that has an obligation to make an Indemnity Payment.

"Indemnitee" means a Party that is entitled to receive an Indemnity Payment.

"Indemnity Payment" means an indemnity payment contemplated by the Separation Agreement, this Agreement or any other ancillary Agreement.

"IRS" means the U.S. Internal Revenue Service.

"Merger Agreement" has the meaning set forth in the recitals.

"Merger Sub 1" has the meaning set forth in the recitals.

"Merger Sub 2" has the meaning set forth in the recitals.

"Mergers" has the meaning set forth in the recitals.

"Metuchen Merger" has the meaning set forth in the recitals.

"Neurotrope" has the meaning set forth in the preamble.

"Neurotrope Consolidated Group" means any consolidated, combined, unitary or similar group of which (i) any member of the Neurotrope Tax Group is or was a member and (ii) SpinCo.

"Neurotrope Merger" has the meaning set forth in the recitals.

"Neurotrope Tax Group" means Neurotrope and any Person that is or was a Subsidiary of Neurotrope as of the Distribution or at any time prior to the Distribution, excluding SpinCo.

"Ordinary Taxes" means Taxes other than Transfer Taxes described in Section 2.04.

"Parent" has the meaning set forth in the recitals.

"Parties" has the meaning set forth in the preamble.

"Pre-Distribution Tax Period" means any taxable period (or portion thereof) that ends on or before the Distribution Date.

"Records" has the meaning set forth in Section 3.06.

"Refund Recipient" has the meaning set forth in Section 2.05.

"Regulations" means the Treasury regulations promulgated under the Code.

"Separation Agreement" has the meaning set forth in the preamble.

"SpinCo" has the meaning set forth in the preamble.

"Straddle Period" has the meaning set forth in Section 2.07.

"Subsidiary" of any Person means any corporation or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or interests having by their terms ordinary voting power to elect at least a majority of the board of directors (or others performing similar functions with respect to such corporation or other organization) is directly or indirectly owned by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its Subsidiaries.

"Tax Advisor" has the meaning set forth in Section 4.04.

"Tax Attribute" has the meaning set forth in Section 2.06(a).

"Tax Contest" means an audit, review, examination or other administrative or judicial proceeding, in each case by any Taxing Authority.

"Tax Dispute" has the meaning set forth in Section 4.04.

"Tax Return" means any return, declaration, statement, report, form, estimate or information return relating to Taxes, including any amendments thereto and any related or supporting information, required or permitted to be filed with any Taxing Authority.

"Taxes" means all forms of taxation or duties imposed by any Governmental Authority, or required by any Governmental Authority to be collected or withheld, including charges, together with any related interest, penalties and other additional amounts.

"Taxing Authority" means any Governmental Authority charged with the determination, collection or imposition of Taxes.

"Transfer Taxes" means all transfer, sales, use, excise, stock, stamp, stamp duty, stamp duty reserve, stamp duty land, documentary, filing, recording, registration, value-added and other similar Taxes (excluding, for the avoidance of doubt, any income, gains, profit or similar Taxes, however assessed).

ARTICLE II

Allocation of Tax Liabilities and Tax Benefits

SECTION 2.01 Neurotrope Indemnification of SpinCo. After the Distribution, Neurotrope shall be liable for, and shall indemnify and hold SpinCo harmless from, the following Taxes (in each case, other than Taxes for which SpinCo is liable under Section 2.02):

(a) Ordinary Taxes of Neurotrope and its Subsidiaries for any taxable period; and

(b) Transfer Taxes for which Neurotrope is responsible under Section 2.04.

SECTION 2.02 SpinCo Indemnification of Neurotrope. After the Distribution, SpinCo shall be liable for, and shall indemnify and hold Neurotrope harmless from, the following Taxes, whether incurred directly by Neurotrope or indirectly through one of its Subsidiaries (but without duplication of any such Taxes that SpinCo has already paid (or caused to be paid) pursuant to Article VI):

(a) Ordinary Taxes (i) of Neurotrope and its Subsidiaries for any Pre-Distribution Tax Period to the extent attributable to SpinCo, (ii) of SpinCo for any taxable period other than a Pre-Distribution Tax Period or (iii) of Neurotrope and its Subsidiaries imposed under Section 1.1503(d)-6 of the Regulations relating to the recapture of any "dual consolidated loss" (within the meaning of Section 1503(d)(2) of the Code) incurred by SpinCo.

(b) Transfer Taxes for which SpinCo is responsible under Section 2.04.

SECTION 2.03 Allocation of Ordinary Taxes.

(a) For purposes of Section 2.03(a)(i), in the case of any Neurotrope Consolidated Group:

(i) If any Ordinary Taxes arise as a result of any adjustments made after the Distribution Date to the portion of the relevant Tax Return for a Pre-Distribution Tax Period that relates to SpinCo, the amount of Ordinary Taxes attributable to SpinCo shall equal the excess, if any, of (A) the amount of Ordinary Taxes actually payable by the Neurotrope Consolidated Group as a result of the adjustments for the relevant period over (B) the amount of Ordinary Taxes that would have been so payable had no adjustments been made to the portions of the relevant Tax Returns relating to SpinCo; and

(ii) The amount of Ordinary Taxes shown as due on any Tax Return filed after the Distribution Date that are attributable to SpinCo shall equal the excess, if any, of (A) the amount of Ordinary Taxes actually shown as due on that Tax Return over (B) the amount of Ordinary Taxes that would have been shown as due on that Tax Return had SpinCo not been included in the Neurotrope Consolidated Group.

(b) For the avoidance of doubt, SpinCo shall be liable for Taxes of any Neurotrope Consolidated Group under Section 2.02(a)(i) only to the extent any adjustment (as described in Section 2.03(a)(i)) or the inclusion of SpinCo in the relevant Neurotrope Consolidated Group (as described in Section 2.03(a)(ii)) results in an actual increase in the aggregate Tax liability of the Neurotrope Consolidated Group in any period. To the extent that any such adjustment or inclusion in one taxable period increases the amount of Ordinary Taxes actually payable by the Neurotrope Consolidated Group in another taxable period, principles consistent with those in Section 2.03(a) shall apply to determine the amount of Ordinary Taxes attributable to SpinCo.

SECTION 2.04 Allocation of Transfer Taxes. Neurotrope and SpinCo each shall be responsible for any Transfer Taxes incurred by the Neurotrope Tax Group and SpinCo, respectively, as a result of the Distribution. If, under applicable Law, both Parties or neither Party are liable for Transfer Taxes, then Neurotrope and SpinCo shall be equally responsible for such Transfer Taxes.

SECTION 2.05 Refunds, Credits and Offsets.

(a) Subject to Section 2.06, if Neurotrope, SpinCo or any of their respective Subsidiaries receives any refund of any Taxes for which the other Party is liable under this Article II (a "Refund Recipient"), such Refund Recipient shall pay to the other Party the entire amount of the refund (including interest, but net of any Taxes imposed with respect to such refund) within 10 business days of receipt or accrual; provided, however, that the other Party, upon the request of such Refund Recipient, shall repay the amount paid to the other Party (plus any penalties, interest or other charges imposed by the relevant Taxing Authority) in the event such Refund Recipient is required to repay such refund. In the event a Party would be a Refund Recipient but for the fact it elected to apply a refund to which it would otherwise have been entitled against a Tax liability arising in a subsequent taxable period, then such Party shall be treated as a Refund Recipient and the economic benefit of so applying the refund shall be treated as a refund, and shall be paid within 10 business days of the due date of the Tax Return to which such refund is applied to reduce the subsequent Tax liability.

(b) For purposes of Section 2.05(a), in the case of any Neurotrope Consolidated Group, the SpinCo shall be entitled to any refund of Taxes only to the extent of the excess, if any, of (i) the amount of any refund (or reduction in subsequent Taxes) that the Neurotrope Consolidated Group actually receives over (ii) the amount of any refund (or reduction in subsequent Taxes) that the Neurotrope Consolidated Group would have received had any adjustments made after the Distribution Date to the portions of any Tax Return relating SpinCo not been made.

SECTION 2.06 Carrybacks.

(a) If a Tax Return of SpinCo for any taxable period ending after the Distribution Date reflects any net operating loss, net capital loss, excess Tax credit or other Tax attribute (a "Tax Attribute"), then SpinCo shall waive the right to carry back any such Tax Attribute to a Pre-Distribution Tax Period to the extent permissible under applicable Law. In the event that SpinCo does carry back a Tax Attribute to a Pre-Distribution Tax Period, then (i) subject to Section 2.06(b), no payment with respect to such carryback shall be due to SpinCo from Neurotrope and (ii) if SpinCo receives any refund, credit or offset of any Taxes in connection with such carryback, SpinCo shall promptly pay to Neurotrope the full amount of such refund or the economic benefit of the credit or offset (including interest, but net of any Taxes imposed with respect to such refund).

(b) Notwithstanding Section 2.06(a), if Neurotrope determines, in its sole discretion, that it has received, either from SpinCo under Section 2.06(a) or directly from a Taxing Authority, a refund of Taxes that SpinCo has actually paid to Neurotrope or to any Taxing Authority pursuant to this Agreement in connection with a carryback by SpinCo of a Tax Attribute to a Pre-Distribution Tax Period, Neurotrope shall pay (or repay) to SpinCo the amount of such refund (net of any Taxes imposed with respect to such refund); provided, however, that SpinCo agrees, upon Neurotrope's request, to repay such amount (plus any penalties, interest or other charges imposed by the relevant Taxing Authority) in the event Neurotrope is required to repay such refund.

SECTION 2.07 Straddle Periods. For U.S. Federal income Tax purposes, the taxable year of SpinCo will close as of the end of the Distribution Date. For any taxable period that includes (but does not end on) the Distribution Date (a "Straddle Period"), Taxes for the Pre-Distribution Tax Period shall be computed (i) in the case of Taxes imposed on a periodic basis (such as real, personal and intangible property Taxes), on a daily pro rata basis and (ii) in the case of other Taxes generally, as if the taxable period ended as of the close of business on the Distribution Date.

ARTICLE III

Tax Returns, Tax Contests and Other Administrative Matters

SECTION 3.01 Responsibility for Preparing Tax Returns. Neurotrope

(a) With respect to any Tax Return that is required or permitted to be filed for a taxable period:

(i) Neurotrope shall prepare and file all Tax Returns of the Neurotrope Tax Group that are required or permitted to be filed for any taxable period.

(ii) Neurotrope shall prepare and file all Tax Returns of SpinCo for any taxable period ending on or before the Distribution Date, including any short taxable year ending by reason of the Distribution. SpinCo shall provide to Neurotrope any information or documentation as reasonably necessary for Neurotrope to prepare any such Tax Returns.

(iii) SpinCo shall prepare and file any Tax Returns of SpinCo that are required or permitted to be filed for any taxable period ending after the Distribution Date, including any Straddle Period.

(b) To the extent that any Tax Return described in Section 3.01(a) directly relates to matters for which SpinCo may have an indemnification obligation to Neurotrope, or that may give rise to a refund to which SpinCo would be entitled, under this Agreement, Neurotrope shall (i) prepare the relevant portions of the Tax Return on a basis consistent with past practice, except (A) as required by applicable Law or to correct any clear error, (B) as a result of changes or elections made on any Tax Return of a Neurotrope Consolidated Group that do not relate primarily to SpinCo or (C) as mutually agreed by the Parties; (ii) notify SpinCo of any such portions not prepared on a basis consistent with past practice; (iii) provide SpinCo a reasonable opportunity to review the relevant portions of the Tax Return; (iv) consider in good faith any reasonable comments made by SpinCo; and (v) use commercially reasonable efforts to incorporate, in the portion of such Tax Return related to SpinCo's potential indemnification obligation (or refund entitlement), any reasonable comments made by SpinCo relating to the Neurotrope's compliance with clause (i). The Parties shall attempt in good faith to resolve any issues arising out of the review of any such Tax Return.

(c) Neurotrope shall, no later than 5 business days before the due date (including extensions) of any Tax Return described in Section 3.01(b), notify SpinCo of any amount (or any portion of any such amount) shown as due on that Tax Return for which SpinCo must indemnify Neurotrope under this Agreement. SpinCo shall pay such amount to the Neurotrope no later than one day prior to the due date (including extensions) of the relevant Tax Return. A failure of Neurotrope to give notice as provided in this Section 3.01(c) shall not relieve SpinCo from its indemnification obligations under this Agreement, except to the extent that the Indemnifying Party shall have been actually and materially prejudiced by such failure.

(d) Without the prior written consent of SpinCo (which consent shall not be unreasonably withheld, conditioned or delayed), Neurotrope shall not file, amend, withdraw, revoke or otherwise alter any Tax Return that relates to any event occurring on or before the Distribution Date to the extent such alternation could reasonably be expected to adversely and materially impact matters for which SpinCo may have an indemnification obligation to Neurotrope.

SECTION 3.02 Tax Contests. Neurotrope

(a) Neurotrope or SpinCo, as applicable, shall, within 10 business days of becoming aware of any Tax Contest that could reasonably be expected to cause the other Party to have an indemnification obligation under this Agreement, notify the other Party of such Tax Contest and thereafter promptly forward or make available to the Indemnifying Party copies of notices and communications relating to the relevant portions of such Tax Contest. A failure by an Indemnitee to give notice as provided in this Section 3.02(a) (or to promptly forward any such notices or communications) shall not relieve the Indemnifying Party's indemnification obligations under this Agreement, except to the extent that the Indemnifying Party shall have been actually prejudiced by such failure.

(b) Neurotrope shall have the exclusive right to control the conduct and settlement of any Tax Contest. Notwithstanding the foregoing, if the conduct or settlement of any portion or aspect of any such Tax Contest could reasonably be expected to cause a SpinCo to have an indemnification obligation under this Agreement, then (i) Neurotrope shall keep SpinCo reasonably informed as to material aspects of any such Tax Contest, (ii) and Neurotrope shall not accept or enter into any settlement of such Tax Context without the consent of SpinCo, which consent shall not be unreasonably withheld or delayed.

SECTION 3.03 Cooperation. Each Party shall cooperate with reasonable requests from the other Party in matters covered by this Agreement, including in connection with the preparation and filing of Tax Returns, the calculation of Taxes, the determination of the proper financial accounting treatment of Tax items and the conduct and settlement of Tax Contests. Such cooperation shall include:

(a) retaining until the expiration of the relevant statute of limitations (including extensions) records, documents, accounting data, computer data and other information ("Records") necessary for the preparation, filing, review, audit or defense of all Tax Returns relevant to an obligation, right or liability of either Party under this Agreement;

(b) providing the other Party reasonable access to Records and to its personnel (ensuring their cooperation) and premises during normal business hours to the extent relevant to an obligation, right or liability of the other Party under this Agreement or otherwise reasonably required by the other Party to complete Tax Returns or to compute the amount of any payment contemplated by this Agreement; and

(c) notifying the other Party prior to disposing of any relevant Records and affording the other Party the opportunity to take possession or make copies of such Records at its discretion.

ARTICLE IV

Indemnification Claims and Payments

SECTION 4.01 Indemnification Claims and Payments.

(a) An Indemnitee shall be entitled to make a claim for payment with respect to Taxes under this Agreement when the Indemnitee determines that it is entitled to such payment and is able to calculate with reasonably accuracy the amount of such payment. Except as otherwise provided in Section 3.01(c), the Indemnitee shall provide to the Indemnifying Party notice of such claim within 30 business days of the first date on which it so becomes entitled to make such claim. Such notice shall include a description of such claim and a detailed calculation of the amount claimed.

(b) Except as otherwise provided in Section 3.01(c), the Indemnifying Party shall make the claimed payment to the Indemnitee within 10 business days after receiving such notice, unless the Indemnifying Party reasonably disputes its liability for, or the amount of, such payment.

(c) A failure by an Indemnitee to give notice as provided in Section 3.01(c) or this Section 4.01(b) shall not relieve the Indemnifying Party's indemnification obligations under this Agreement, except to the extent that the Indemnifying Party shall have been actually prejudiced by such failure.

(d) Nothing in this Section 4.01 shall prejudice Neurotrope's right to receive payments pursuant to Section 3.01(c).

SECTION 4.02 Amount of Indemnity Payments. The amount of any Indemnity Payment shall be (i) reduced to take into account any Tax benefit actually realized by the Indemnitee resulting from the incurrence of the liability in respect of which the Indemnity Payment is made and (ii) increased to take into account any Tax cost actually realized by the Indemnitee resulting from the receipt of the Indemnity Payment (including any Tax cost arising from such Indemnity Payment having resulted in income or gain to either Party, for example, under Section 1.1502-19 of the Regulations, and any Taxes imposed on additional amounts payable pursuant to this clause (ii)).

SECTION 4.03 Treatment of Indemnity Payments. Any Indemnity Payment (other than any portion of a payment that represents interest accruing after the Distribution Date) shall be treated by Neurotrope and SpinCo for all Tax purposes as a distribution from SpinCo to Neurotrope immediately prior to the Distribution (if made by SpinCo to Neurotrope) or as a contribution from Neurotrope to SpinCo immediately prior to the Distribution (if made by Neurotrope to SpinCo), except as otherwise required by applicable Law or a Determination.

SECTION 4.04 Tax Disputes. The Parties shall negotiate in good faith to resolve any disputes relating to Tax matters governed by this Agreement ("Tax Disputes"). If any Tax Disputes remain unresolved after 30 calendar days, the matter will be referred to a mutually acceptable Tax advisor with a reputable accounting firm (a "Tax Advisor"). The Parties shall instruct the Tax Advisor to furnish notice to each Party of its resolution of the Tax Dispute as soon as practicable, but in any event no later than 60 calendar days after its acceptance of the matter for resolution. Any such resolution by the Tax Advisor will be binding on the Parties and the Parties shall take, or cause to be taken, any action necessary to implement the resolution. All fees and expenses of the Tax Advisor shall be shared equally by the Parties.

ARTICLE V

Miscellaneous

SECTION 5.01 Termination. This Agreement will terminate without further action at any time before the Distribution upon termination of the Separation Agreement. If terminated, no Party will have any Liability of any kind to the other Party or any other Person on account of this Agreement, except as provided in the Separation Agreement.

SECTION 5.02 Survival. Except as expressly set forth in this Agreement, the covenants and indemnification obligations in this Agreement shall survive the Spin-Off and shall remain in full force and effect.

SECTION 5.03 Separation Agreement. The Parties agree that, in the event of a conflict between the terms of this Agreement and the Separation Agreement with respect to the subject matter hereof, the terms of this Agreement shall govern.

SECTION 5.04 Confidentiality. Each Party hereby acknowledges that confidential Information of such Party or its Subsidiaries may be exposed to employees and agents of the other Party or its Subsidiaries as a result of the activities contemplated by this Agreement. Each Party agrees, on behalf of itself and its Subsidiaries, that such Party's obligations with respect to Information and data of the other Party or its Subsidiaries shall be governed by the Separation Agreement.

SECTION 5.05 Counterparts; Entire Agreement.

(a) This Agreement may be executed in one or more counterparts, all of which counterparts shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each Party and delivered to the other Party. This Agreement may be executed by facsimile or PDF signature and a facsimile or PDF signature shall constitute an original for all purposes.

(b) This Agreement, the Separation Agreement, the other ancillary Agreements and the Appendices, Exhibits and Schedules hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties with respect to the subject matter hereof other than those set forth or referred to herein or therein.

SECTION 5.06 Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the Laws of the State of New York, regardless of the Laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each Party irrevocably consents to the exclusive jurisdiction, forum and venue of the Commercial Division of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York over any and all claims, disputes, controversies or disagreements between the Parties or any of their respective Subsidiaries, Affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby or thereby.

SECTION 5.07 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT, IN THE EVENT OF ANY LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.07.

SECTION 5.08 Assignability. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by either Party without the prior written consent of the other Party. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns. Notwithstanding the foregoing, either Party may assign this Agreement without consent in connection with (a) a merger transaction in which such Party is not the surviving entity and the surviving entity acquires or assumes all or substantially all of such Party's assets, or (b) the sale of all or substantially all of such Party's assets; provided, however, that the assignee expressly assumes in writing all of the obligations of the assigning Party under this Agreement, and the assigning Party provides written notice and evidence of such assignment and assumption to the non-assigning Party. No assignment permitted by this Section 5.08 shall release the assigning Party from liability for the full performance of its obligations under this Agreement.

SECTION 5.09 Third-Party Beneficiaries. (a) The provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to confer upon any Person except the Parties hereto any rights or remedies hereunder and (b) there are no third-party beneficiaries of this Agreement and this Agreement shall not provide any third Person with any remedy, claim, liability, reimbursement, cause of action or other right in excess of those existing without reference to this Agreement.

SECTION 5.10 Notices. All notices or other communications under this Agreement shall be in writing and shall be provided in the manner set forth in the Separation Agreement. In addition, copies of all documents mentioned in the preceding sentence shall also be sent to the address set forth below:

If to Neurotrope, to:

with a copy to:

If to SpinCo, to:

with a copy to:

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Chrysler Center
666 Third Avenue
New York, NY 10017
Attn: Abraham A. Reshtick, Esq.
Kenneth Koch, Esq.

Either Party may, by notice to the other Party, change the address to which such copies of documents are to be given.

SECTION 5.11 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party. Upon any such determination, any such provision, to the extent determined to be invalid, void or unenforceable, shall be deemed replaced by a provision that such court determines is valid and enforceable and that comes closest to expressing the intention of the invalid, void or unenforceable provision.

SECTION 5.12 Headings. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 5.13 Waivers of Default. No failure or delay of either Party (or the applicable member of its Group) in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such right or power, or any course of conduct, preclude any other or further exercise thereof or the exercise of any other right or power. Waiver by either Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default.

SECTION 5.14 Specific Performance. In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, Neurotrope shall have the right to specific performance and injunctive or other equitable relief of its rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. SpinCo shall not oppose the granting of such relief on the basis that money damages are an adequate remedy. The Parties agree that the remedies at law for any breach or threatened breach hereof, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived. The Parties acknowledge and agree that the right of specific enforcement is an integral part of this Agreement and without that right, neither Neurotrope nor SpinCo would have entered into this Agreement.

SECTION 5.15 Amendments. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by either Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of each Party.

SECTION 5.16 Interpretation. The rules of interpretation set forth in Section 12.14 of the Separation Agreement shall be incorporated by reference to this Agreement, *mutatis mutandis*. NOTWITHSTANDING THE FOREGOING, THE PURPOSE OF ARTICLE IV IS TO ENSURE THAT EACH STEP OF THE TRANSACTIONS QUALIFY FOR ITS INTENDED TAX TREATMENT AND, ACCORDINGLY, THE PARTIES AGREE THAT THE LANGUAGE THEREOF SHALL BE INTERPRETED IN A MANNER THAT SERVES THIS PURPOSE TO THE GREATEST EXTENT POSSIBLE.

SECTION 5.17 Compliance by Subsidiaries. The Parties shall cause their respective Subsidiaries to comply with this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

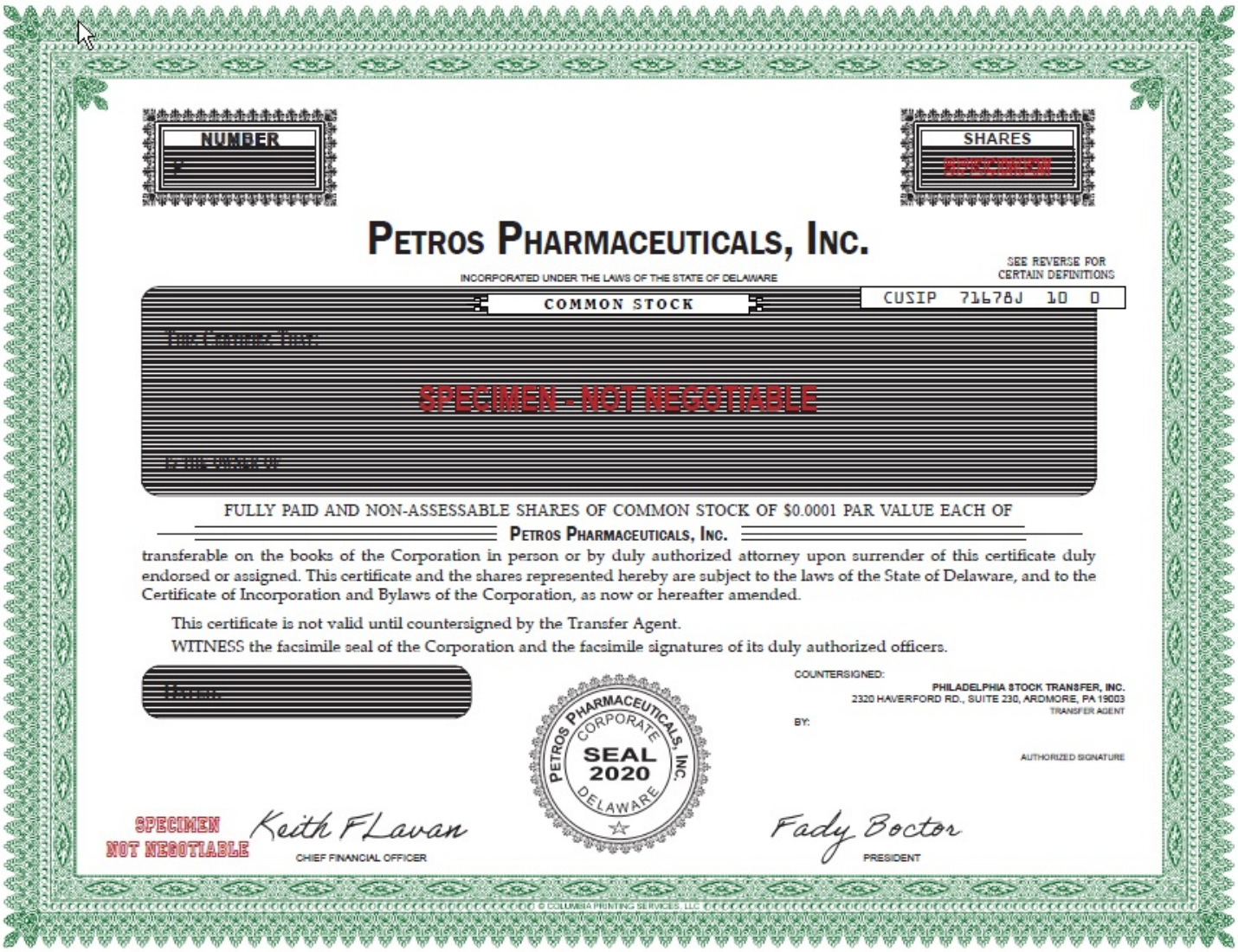
Neurotrope Inc.

by _____
Name:
Title:

Neurotrope Bioscience, Inc.

by _____
Name:
Title:

Exhibit 4.1



The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common	*UNIF GIFT MIN ACT - .....Custodian..... (Cust) (Minor)*
TEN ENT - as tenants by the entireties	
JT TEN - as joint tenants with right of survivorship and not as tenants in common	*under Uniform Gifts to Minors Act ..... (State)*

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ *hereby sell, assign and transfer unto*

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

_____

_____

_____ *Shares*

of the stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ *Attorney*

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated _____

_____

NOTICE: THE SIGNATURE TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Signature(s) Guaranteed

By _____

The Signature(s) must be guaranteed by an eligible guarantor institution (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions with membership in an approved Signature Guarantee Medallion Program), pursuant to SEC Rule 17Ad-15.

THE CORPORATION WILL FURNISH TO ANY STOCKHOLDER, UPON REQUEST AND WITHOUT CHARGE, A FULL STATEMENT OF THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF THE SHARES OF EACH CLASS AND SERIES AUTHORIZED TO BE ISSUED, SO FAR AS THE SAME HAVE BEEN DETERMINED, AND OF THE AUTHORITY, IF ANY, OF THE BOARD TO DIVIDE THE SHARES INTO CLASSES OR SERIES AND TO DETERMINE AND CHANGE THE RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS OF ANY CLASS OR SERIES. SUCH REQUEST MAY BE MADE TO THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT NAMED ON THIS CERTIFICATE.

COLUMBIA PRINTING SERVICES, LLC - www.stockinformation.com

Exhibit 4.2

Series E Warrants

PETROS PHARMACEUTICALS, INC.

WARRANT TO PURCHASE COMMON STOCK

Series E Warrant No.: [—]

Date of Issuance: _____ ("**Issuance Date**")

Petros Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **[———]**, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time or times on or after the Issuance Date but not after 5:00 p.m., New York time, on the Expiration Date (as defined below), **[———]** (subject to adjustment as provided herein) fully paid and non-assessable shares of Common Stock (as defined below) (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in the Securities Purchase Agreement (as defined below). This Warrant is one of the warrants to Purchase Common Stock (the "**SPA Warrants**") issued pursuant to that certain Securities Purchase Agreement, dated as of November 13, 2015, by and among Neurotrope, Inc. and the investor(s) thereunder (the "**Buyer**" or "**Buyers**" as applicable) referred to therein (the "**Securities Purchase Agreement**").

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1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any day on or after the Issuance Date in whole or in part, by delivery (whether via facsimile or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. Within two (2) Trading Days following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (in respect of such specific exercise, the "**Aggregate Exercise Price**") in cash or via wire transfer of immediately available funds if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant certificate and issuance of a new Warrant certificate evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant certificate after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1st) Trading Day following the date on which the Company has received an Exercise Notice, the Company shall transmit by facsimile or email an acknowledgment of confirmation of receipt of such Exercise Notice, in the form attached hereto as **Exhibit B** to the Holder and the Company's transfer agent (the "**Transfer Agent**"). On or before the later of (i) three (3) Trading Days after receipt of the applicable Exercise Notice and (ii) other than in the case of a Cashless Exercise, one (1) Trading Day following delivery of the Aggregate Exercise Price (such later date, the "**Warrant Share Delivery Deadline**"), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program (which the Company shall cause the Transfer Agent to do at Holder's request) and provided that such shares of Common Stock are unrestricted, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if such shares of Common Stock are restricted, issue and deliver to the Holder or, at the Holder's instruction pursuant to the Exercise Notice, the Holder's agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of an Exercise Notice, so long as the Aggregate Exercise Price is delivered within two (2) Trading Days after delivery of the Exercise Notice (unless such exercise is pursuant to a valid Cashless Exercise), the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Trading Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 8(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. Notwithstanding any provision of this Warrant to the contrary, no more than the Maximum Eligibility Number of Warrant Shares shall be exercisable hereunder.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means $25.00 subject to adjustment as provided herein.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail, for any reason or for no reason, to issue (or cause to be issued) to the Holder on or prior to the Warrant Share Delivery Deadline, the Warrant Shares required to be delivered in accordance with, and in the manner required by, Section 1(a) above, then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each Trading Day after such third (3rd) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to either (i) with respect to restricted shares, 1% of the product of (A) the aggregate number of restricted shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a), or (ii) with respect to unrestricted securities, 2% of the product of (A) the aggregate number of unrestricted shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last

possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a). If on or prior to the Warrant Share Delivery Deadline, the Company shall fail to issue and deliver (or cause to be issued and delivered) the Warrant Shares required to be delivered in accordance with, and in the manner required by, Section 1(a) above, and if on or after such Warrant Share Delivery Deadline the Holder (or any other Person in respect, or on behalf, of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such exercise that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to the Holder, the Company shall within five (5) Business Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and reasonable out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price less the product of (A) such number of shares of Common Stock multiplied by (B) "B" as set out in the formula in Section 1(d).

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at any time after one hundred and twenty (120) calendar days following the Issuance Date, the Warrant Shares to be received upon the cash exercise of this Warrant are not freely tradable by Holder without restriction of any kind or nature, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\textbf{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the Bid Price of the Common Stock as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof (including, without limitation, the Net Number), the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed, provided that following such issuance to Holder such dispute shall be resolved in accordance with Section 14.

(f) Limitations on Exercises. Notwithstanding anything to the contrary contained in this Warrant, this Warrant shall not be exercisable by the Holder hereof to the extent (but only to the extent) that the Holder (together with such Holder's affiliates (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) and any other Persons acting as a group together ("**Attribution Parties**")) would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the Common Stock after giving effect to such exercise. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder or any of its affiliates or Attribution Parties) and of which such securities shall be exercisable (as among all such securities owned by the Holder and its Attribution Parties) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the 1934 Act (as defined in the Securities Purchase Agreement) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder (and such Holder's Attribution Parties) of this Warrant. The holders of Common Stock shall be third party beneficiaries of this paragraph and the Company may not waive this paragraph without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written request of the Holder, the Company shall within one (1) Business Day confirm in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder (and its Attribution Parties) sending such notice and not to any other Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act.

(g) Insufficient Authorized Shares. The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock equal to 150% of the shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock hereunder (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant). If, notwithstanding the foregoing, and not in limitation thereof, at any time while any of the SPA Warrants remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of the SPA Warrants at least a number of shares of Common Stock equal to the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of the SPA Warrants then outstanding (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for all the SPA Warrants then outstanding. Without limiting the generality of the foregoing sentence, to the extent required by law or the rules of the Eligible Market on which the Common Stock is traded or quoted, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, to the extent required by law or the rules of the Eligible Market on which the Common Stock is traded or quoted, the Company shall provide each shareholder with a proxy statement and shall use its reasonable efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. If the Company, at any time on or after the date of the Securities Purchase Agreement, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of stock into a smaller number of shares, then in each such case (a) the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock

outstanding immediately after such event and (b) the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein). Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If an event requiring an adjustment of the Exercise Price under this Section occurs, the Mandatory Notice Trading Price shall be adjusted accordingly.

(b) Reserved.

(c) Other Events. In the event that the Company (or any Subsidiary (as defined in the Securities Purchase Agreement)) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect the Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 2 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Company's board of directors shall in good faith determine and implement an appropriate adjustment in the Exercise Price and the number of Warrant Shares (if applicable) so as to protect the rights of the Holder, provided that no such adjustment pursuant to this Section 2(c) will increase the Exercise Price or decrease the number of Warrant Shares as otherwise determined pursuant to this Section 2, provided further that if the Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then such dispute shall be settled pursuant to the terms of Section 13 of this Warrant.

(d) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest 1/100th of cent and the nearest 1/100th of a share, as applicable.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distributions would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such Distribution to such extent) and such Distribution to such extent shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock or shares of stock convertible into Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage); further provided that in the event of any Purchase Rights due in relation to a grant, issue or sale to record holders of shares of stock convertible into Common Stock, the amount of Purchase Rights to be received by the Holder shall be determined by calculating the Purchase Rights the holders of the record holders of shares of stock Convertible into Common Stock received per share of Common Stock underlying such class of stock convertible into Common Stock.

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Securities Purchase Agreement) in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant).

(c) Reserved.

(d) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants, options or other instruments or securities) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the 1934 Act and thereafter receivable upon exercise of this Warrant (and any such subsequent warrants, options or other instruments or securities)).

5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement and including any certificate of designations), Bylaws (as defined in the Securities Purchase Agreement) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant (or such other securities, cash, assets or other property then deliverable on exercise of this Warrant), and (iii) shall, so long as any of the SPA Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the SPA Warrants, 150% of the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the SPA Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A SHAREHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a shareholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 6, the Company shall provide the Holder with copies of the same notices and other information given to the shareholders of the Company generally, contemporaneously with the giving thereof to the shareholders; provided that the Company shall not be obligated to provide such information if it is filed with the SEC through EDGAR and available to the public through the EDGAR system.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred pursuant to the terms and conditions of this Warrant, the Holder shall surrender this Warrant to the Company, whereupon the Company will promptly issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may reasonably request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. Prior to transferring this Warrant, the Holder shall inform the transferee of the total number of Warrant Shares then underlying this Warrant.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 7(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) as soon as practicable upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s). If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock (other than a dividend payable solely in shares of Common Stock) or (ii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such dividend, distribution or transaction; provided that the Company shall not be obligated to provide such notice if the required information is filed with the SEC through EDGAR and available to the public through the EDGAR system. Notwithstanding anything to the contrary in this Section 8, the failure to deliver any notice under this Section 8 or any defect therein shall not affect the validity of the corporate action required to be described in such notice. Until the exercise of its, his or her Warrant or any portion of such Warrant, a Holder shall not have nor exercise any rights by virtue of ownership of a Warrant as a shareholder of the Company (including without limitation the right to notification of shareholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company other than as provided in this Section 8.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only with the prior written consent of the Company and the Holder. The Holder shall be entitled, at its option, to the benefit of any amendment of any other similar warrant issued under the Securities Purchase Agreement (excluding any warrants delivered to the Placement Agent or its Affiliates). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

13. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price, the Closing Sale Price, the Bid Price or fair market value or the arithmetic calculation of the Warrant Shares (as the case may be), the Company or the Holder (as the case may be) may submit the disputed determinations or arithmetic calculations (as the case may be) via facsimile (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder or the Company (as the case may be) learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) of the Exercise Price, the Closing Sale Price, the Bid Price or fair market value or the number of Warrant Shares (as the case may be) within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed arithmetic calculation of the Warrant Shares, the disputed determination of the Exercise Price, the Closing Sale Price, the Bid Price, fair market value or otherwise (as the case may be) to an independent, reputable investment bank of nationally recognized standing or other independent professional organization of equal reputation and standing selected jointly by the Holder and the Company (each proposed organization being subject to the consent of the other party, with such consent not to be unreasonably withheld, conditioned or delayed) or (b) if acceptable to the Holder, the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall request the investment bank, professional organization or the accountant (as the case may be) to perform at the Company's expense the determinations or calculations (as the case may be) and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's, professional organization's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. The party whose determination or calculation is furthest from that determined or calculation by the investment bank or accountant shall pay the costs of such determination or calculation.

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual or consequential damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder may cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant may be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance or stamp tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company. The Holder represents that by accepting this Warrant it understands that this Warrant and any securities obtainable upon exercise of this Warrant have not been registered for sale under Federal or state securities laws and are being offered and sold to the Holder pursuant to one or more exemptions from the registration requirements of such securities laws. In the absence of an effective registration of such securities or an exemption therefrom, any certificates for such securities shall bear the legend set forth on the first page hereof. The Holder understands that it must bear the economic risk of its investment in this Warrant and any securities obtainable upon exercise of this Warrant for an indefinite period of time, as this Warrant and such securities have not been registered under Federal or state securities laws and therefore cannot be sold unless subsequently registered under such laws, unless an exemption from such registration is available.

16. DTC Accounts. Notwithstanding anything to the contrary in this Warrant, the Company shall not be obligated herein to credit any restricted securities, including any Warrant Shares if so restricted, to the Holder's DTC account, and any obligation hereunder to credit shares to a Holder's DTC account shall only apply to unrestricted securities.

17. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) (the "**Pink Sheets**") as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(d) "**Bloomberg**" means Bloomberg, L.P.

(e) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(f) "**Closing Sale Price**" means, for any security as of any date, the last closing trade price, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price (as the case may be) then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of all of the market makers for such security as reported in the Pink Sheets. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(g) "**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(h) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(i) "**Effective Date**" shall have the meaning give in Section 5(a).

(j) "**Eligible Market**" means the OTCQX marketplace of the OTC Markets Group, Inc., the OTCQB marketplace of the OTC Markets Group, Inc., The New York Stock Exchange, Inc., the NYSE Amex Equities, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market.

(k) "**Expiration Date**" means the date that the five year anniversary of the closing of the mergers contemplated by the Merger Agreement (as defined in the Warrant Amendment Agreement, dated as of September 28, 2020, by and between the Company and the Holder).

(l) "**Fundamental Transaction**" means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) becomes the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(m) "**Maximum Eligibility Number**" means initially zero and shall be increased upon each exercise of the Series C Warrant held by the Holder by such aggregate number of shares of Common Stock equal to 100% of the number of shares of Common Stock issued upon any such exercise of such Series C Warrant (as adjusted for stock splits, stock distributions, recapitalizations and similar events).

(n) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(o) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(p) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(q) "**Principal Market**" means the Eligible Market that is the principal securities exchange market for the Common Stock.

(r) "**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated November 13, 2015, by and among Neurotrope, Inc. and each of the buyers who are a party thereto.

(s) "**Series C Warrant**" means the Series C Warrant to Purchase Common Stock issued pursuant to the Securities Purchase Agreement.

(t) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(u) "**Trading Day**" means, as applicable, (x) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that "Trading Day" shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) or (y) with respect to all determinations other than price determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(v) "**Voting Stock**" of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(w) "**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK

PETROS PHARMACEUTICALS, INC.

The undersigned holder hereby exercises the right to purchase of the shares of Common Stock ("**Warrant Shares**") of Petros Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), evidenced by Series E Warrant No. (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a "Cash Exercise" with respect to _____ Warrant Shares; and/or

_____ a "Cashless Exercise" with respect to _____ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was $.

2. Payment of Exercise Price. The Holder shall pay the Aggregate Exercise Price in the sum of $ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares and Net Number of shares of Common Stock. The Company shall deliver to Holder, or its designee or agent as specified below, shares of Common Stock in respect of the exercise contemplated hereby. Delivery shall be made to Holder, or for its benefit, to the following address:

_____

_____

_____

Date: _____

Name of Registered Holder

By: _____

Name:
Title:

Account Number: _____
(if shares are delivered by electronic book entry transfer)

Transaction Code Number: _____
(if shares are delivered by electronic book entry transfer)

EXHIBIT B

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__, from the Company and acknowledged and agreed to by _____.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

Exhibit 4.3

Series F Warrants

PETROS PHARMACEUTICALS, INC.

WARRANT TO PURCHASE COMMON STOCK

Series F Warrant No.: [—]

Date of Issuance:_____ ("**Issuance Date**")

Petros Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), hereby certifies that, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **[———]**, the registered holder hereof or its permitted assigns (the "**Holder**"), is entitled, subject to the terms set forth below, to purchase from the Company, at the Exercise Price (as defined below) then in effect, upon exercise of this Warrant to Purchase Common Stock (including any Warrants to Purchase Common Stock issued in exchange, transfer or replacement hereof, the "**Warrant**"), at any time or times on or after the Issuance Date but not after 5:00 p.m., New York time, on the Expiration Date (as defined below), **[———]** (subject to adjustment as provided herein) fully paid and non-assessable shares of Common Stock (as defined below) (the "**Warrant Shares**"). Except as otherwise defined herein, capitalized terms in this Warrant shall have the meanings set forth in the Securities Purchase Agreement (as defined below). This Warrant is one of the warrants to Purchase Common Stock (the "**SPA Warrants**") issued pursuant to that certain Securities Purchase Agreement, dated as of November 17, 2016, by and among Neurotrope, Inc. and the investor(s) thereunder (the "**Buyer**" or "**Buyers**" as applicable) referred to therein (the "**Securities Purchase Agreement**").

1. EXERCISE OF WARRANT.

(a) Mechanics of Exercise. Subject to the terms and conditions hereof (including, without limitation, the limitations set forth in Section 1(f)), this Warrant may be exercised by the Holder on any day on or after the Issuance Date in whole or in part, by delivery (whether via facsimile, in pdf format or otherwise) of a written notice, in the form attached hereto as **Exhibit A** (the "**Exercise Notice**"), of the Holder's election to exercise this Warrant. Within two (2) Trading Days following an exercise of this Warrant as aforesaid, the Holder shall deliver payment to the Company of an amount equal to the Exercise Price in effect on the date of such exercise multiplied by the number of Warrant Shares as to which this Warrant was so exercised (in respect of such specific exercise, the "**Aggregate Exercise Price**") in cash or via wire transfer of immediately available funds if the Holder did not notify the Company in such Exercise Notice that such exercise was made pursuant to a Cashless Exercise (as defined in Section 1(d)). No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. The Holder shall not be required to deliver the original of this Warrant in order to effect an exercise hereunder. Execution and delivery of an Exercise Notice with respect to less than all of the Warrant Shares shall have the same effect as cancellation of the original of this Warrant certificate and issuance of a new Warrant certificate evidencing the right to purchase the remaining number of Warrant Shares. Execution and delivery of an Exercise Notice for all of the then-remaining Warrant Shares shall have the same effect as cancellation of the original of this Warrant certificate after delivery of the Warrant Shares in accordance with the terms hereof. On or before the first (1st) Trading Day following the date on which the Company has received an Exercise Notice, the Company shall transmit by facsimile or email an acknowledgment of confirmation of receipt of such Exercise Notice, in the form attached hereto as **Exhibit B** to the Holder and the Company's transfer agent (the "**Transfer Agent**"). On or before the earlier of: (A) three (3) Trading Days and (B) the number of Trading Days comprising the Standard Settlement Period (as defined below) after receipt of the applicable Exercise Notice and (ii) other than in the case of a Cashless Exercise, one (1) Trading Day following delivery of the Aggregate Exercise Price (such later date, the "**Warrant Share Delivery Deadline**"), the Company shall (X) provided that the Transfer Agent is participating in The Depository Trust Company ("**DTC**") Fast Automated Securities Transfer Program (which the Company shall cause the Transfer Agent to do at Holder's request) and provided that such shares of Common Stock are unrestricted, upon the request of the Holder, credit such aggregate number of shares of Common Stock to which the Holder is entitled pursuant to such exercise to the Holder's or its designee's balance account with DTC through its Deposit/Withdrawal at Custodian system, or (Y) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program or if such shares of Common Stock are restricted, issue and deliver to the Holder or, at the Holder's instruction pursuant to the Exercise Notice, the Holder's agent or designee, in each case, sent by reputable overnight courier to the address as specified in the applicable Exercise Notice, a certificate, registered in the Company's share register in the name of the Holder or its designee (as indicated in the applicable Exercise Notice), for the number of shares of Common Stock to which the Holder is entitled pursuant to such exercise. Upon delivery of an Exercise Notice, so long as the Aggregate Exercise Price is delivered within two (2) Trading Days after delivery of the Exercise Notice (unless such exercise is pursuant to a valid Cashless Exercise), the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date such Warrant Shares are credited to the Holder's DTC account or the date of delivery of the certificates evidencing such Warrant Shares (as the case may be). If this Warrant is submitted in connection with any exercise pursuant to this Section 1(a) and the number of Warrant Shares represented by this Warrant submitted for exercise is greater than the number of Warrant Shares being acquired upon an exercise, then, at the request of the Holder, the Company shall as soon as practicable and in no event later than three (3) Trading Days after any exercise and at its own expense, issue and deliver to the Holder (or its designee) a new Warrant (in accordance with Section 7(d)) representing the right to purchase the number of Warrant Shares purchasable immediately prior to such exercise under this Warrant, less the number of Warrant Shares with respect to which this Warrant is exercised. No fractional shares of Common Stock are to be issued upon the exercise of this Warrant, but rather the number of shares of Common Stock to be issued shall be rounded up to the nearest whole number. The Company shall pay any and all taxes and fees which may be payable with respect to the issuance and delivery of Warrant Shares upon exercise of this Warrant. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof. As used herein, "**Standard Settlement Period**" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary trading market or quotation system with respect to the Common Stock as in effect on the date of delivery of the Exercise Notice.

(b) Exercise Price. For purposes of this Warrant, "**Exercise Price**" means $10.25 subject to adjustment as provided herein. The Company in its sole discretion may lower the Exercise Price at any time prior to the Expiration Date.

(c) Company's Failure to Timely Deliver Securities. If the Company shall fail, for any reason or for no reason, to issue (or cause to be issued) to the Holder on or prior to the Warrant Share Delivery Deadline, the Warrant Shares required to be delivered in accordance with, and in the manner required by, Section 1(a) above, then, in addition to all other remedies available to the Holder, the Company shall pay in cash to the Holder on each Trading Day after such third (3rd) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to either (i) with respect to restricted shares, 1% of the product of (A) the aggregate number of restricted shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a), or (ii) with respect to unrestricted securities, 2% of the product of (A) the aggregate number of unrestricted shares of Common Stock not issued to the Holder on a timely basis and to which the Holder is entitled and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 1(a). If on or prior to the Warrant Share Delivery Deadline, the Company shall fail to issue and deliver (or cause to be issued and delivered) the Warrant Shares required to be delivered in accordance with, and in the manner required by, Section 1(a) above, and if on or after such Warrant Share Delivery Deadline the Holder (or any other Person in respect, or on behalf, of the Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such exercise that the Holder so anticipated receiving from the Company, then, in addition to all other remedies available to the Holder, the Company shall within five (5) Business Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including brokerage commissions and reasonable out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of the Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (ii) promptly honor its obligation to so issue and deliver to the Holder a certificate or certificates representing such shares of Common Stock or credit the Holder's balance account with DTC for the number of shares of Common Stock to which the Holder is entitled upon the Holder's exercise hereunder (as the case may be) and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price less the product of (A) such number of shares of Common Stock multiplied by (B) "B" as set out in the formula in Section 1(d).

(d) Cashless Exercise. Notwithstanding anything contained herein to the contrary (other than Section 1(f) below), if at any time after the Issuance Date, the Warrant Shares to be received upon the cash exercise of this Warrant are not freely tradable by Holder without restriction of any kind or nature, then the Holder may, in its sole discretion, exercise this Warrant in whole or in part and, in lieu of making the cash payment otherwise contemplated to be made to the Company upon such exercise in payment of the Aggregate Exercise Price, elect instead to receive upon such exercise the "Net Number" of shares of Common Stock determined according to the following formula (a "**Cashless Exercise**"):

$$\textbf{Net Number} = \frac{(A \times B) - (A \times C)}{B}$$

For purposes of the foregoing formula:

A= the total number of shares with respect to which this Warrant is then being exercised.

B= as applicable: (i) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the date of the applicable Exercise Notice if such Exercise Notice is (1) both executed and delivered pursuant to Section 1(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 1(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) the Bid Price of the Common Stock as of the time of the Holder's execution of the applicable Exercise Notice if such Exercise Notice is executed during "regular trading hours" on a Trading Day and is delivered within two (2) hours thereafter pursuant to Section 1(a) hereof or (iii) the Closing Sale Price of the Common Stock on the date of the applicable Exercise Notice if the date of such Exercise Notice is a Trading Day and such Exercise Notice is both executed and delivered pursuant to Section 1(a) hereof after the close of "regular trading hours" on such Trading Day.

C= the Exercise Price then in effect for the applicable Warrant Shares at the time of such exercise.

(e) Disputes. In the case of a dispute as to the determination of the Exercise Price or the arithmetic calculation of the number of Warrant Shares to be issued pursuant to the terms hereof (including, without limitation, the Net Number), the Company shall promptly issue to the Holder the number of Warrant Shares that are not disputed, provided that following such issuance to Holder such dispute shall be resolved in accordance with Section 13.

(f) Limitations on Exercises. Notwithstanding anything to the contrary contained in this Warrant, this Warrant shall not be exercisable by the Holder hereof to the extent (but only to the extent) that the Holder (together with such Holder's affiliates (as defined in Rule 405 promulgated under the Securities Act of 1933, as amended) and any other Persons acting as a group together ("**Attribution Parties**")) would beneficially own in excess of 9.99% (the "**Maximum Percentage**") of the Common Stock after giving effect to such exercise. To the extent the above limitation applies, the determination of whether this Warrant shall be exercisable (vis-à-vis other convertible, exercisable or exchangeable securities owned by the Holder or any of its affiliates or Attribution Parties) and of which such securities shall be exercisable (as among all such securities owned by the Holder and its Attribution Parties) shall, subject to such Maximum Percentage limitation, be determined on the basis of the first submission to the Company for conversion, exercise or exchange (as the case may be). No prior inability to exercise this Warrant pursuant to this paragraph shall have any effect on the applicability of the provisions of this paragraph with respect to any subsequent determination of exercisability. For the purposes of this paragraph, beneficial ownership and all determinations and calculations (including, without limitation, with respect to calculations of percentage ownership) shall be determined in accordance with Section 13(d) of the 1934 Act (as defined in the Securities Purchase Agreement) and the rules and regulations promulgated thereunder. The provisions of this paragraph shall be implemented in a manner otherwise than in strict conformity with the terms of this paragraph to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Maximum Percentage beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such Maximum Percentage limitation. The limitations contained in this paragraph shall apply to a successor Holder (and such Holder's Attribution Parties) of this Warrant. The holders of Common Stock shall be third party beneficiaries of this paragraph and the Company may not waive this paragraph without the consent of holders of a majority of its Common Stock. For any reason at any time, upon the written request of the Holder, the Company shall within one (1) Business Day confirm in writing to the Holder the number of shares of Common Stock then outstanding, including by virtue of any prior conversion or exercise of convertible or exercisable securities into Common Stock, including, without limitation, pursuant to this Warrant or securities issued pursuant to the Securities Purchase Agreement. Upon delivery of a written notice to the Company, the Holder may from time to time increase or decrease the Maximum Percentage to any other percentage not in excess of 9.99% as specified in such notice; provided that (i) any such increase in the Maximum Percentage will not be effective until the sixty-first (61st) day after such notice is delivered to the Company and (ii) any such increase or decrease will apply only to the Holder (and its Attribution Parties) sending such notice and not to any other Holder. For purposes of clarity, the shares of Common Stock issuable pursuant to the terms of this Warrant in excess of the Maximum Percentage shall not be deemed to be beneficially owned by the Holder for any purpose including for purposes of Section 13(d) or Rule 16a-1(a)(1) of the 1934 Act.

(g) Insufficient Authorized Shares. The Company shall at all times keep reserved for issuance under this Warrant a number of shares of Common Stock as shall be necessary to satisfy the Company's obligation to issue shares of Common Stock hereunder (without regard to any limitation otherwise contained herein with respect to the number of shares of Common Stock that may be acquirable upon exercise of this Warrant). If, notwithstanding the foregoing, and not in limitation thereof, at any time while any of the SPA Warrants remain outstanding the Company does not have a sufficient number of authorized and unreserved shares of Common Stock to satisfy its obligation to reserve for issuance upon exercise of the SPA Warrants at least a number of shares of Common Stock equal to the number of shares of Common Stock as shall from time to time be necessary to effect the exercise of all of the SPA Warrants then outstanding (the "**Required Reserve Amount**") (an "**Authorized Share Failure**"), then the Company shall immediately take all action necessary to increase the Company's authorized shares of Common Stock to an amount sufficient to allow the Company to reserve the Required Reserve Amount for all the SPA Warrants then outstanding. Without limiting the generality of the foregoing sentence, to the extent required by law or the rules of the Eligible Market on which the Common Stock is traded or quoted, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its shareholders for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting, to the extent required by law or the rules of the Eligible Market on which the Common Stock is traded or quoted, the Company shall provide each shareholder with a proxy statement and shall use its reasonable efforts to solicit its shareholders' approval of such increase in authorized shares of Common Stock.

2. ADJUSTMENT OF EXERCISE PRICE AND NUMBER OF WARRANT SHARES. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 2.

(a) Stock Dividends and Splits. If the Company, at any time on or after the date of the Securities Purchase Agreement, (i) pays a stock dividend on one or more classes of its then outstanding shares of Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its then outstanding shares of Common Stock into a larger number of shares or (iii) combines (by combination, reverse stock split or otherwise) one or more classes of its then outstanding shares of stock into a smaller number of shares, then in each such case (a) the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event and (b) the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the adjusted number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment (without regard to any limitations on exercise contained herein). Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination. If an event requiring an adjustment of the Exercise Price under this Section occurs, the Mandatory Notice Trading Price shall be adjusted accordingly.

(b) Calculations. All calculations under this Section 2 shall be made by rounding to the nearest cent and the nearest 1/100th of a share, as applicable.

3. RIGHTS UPON DISTRIBUTION OF ASSETS. In addition to any adjustments pursuant to Section 2 above, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "**Distribution**"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distributions would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such Distribution to such extent) and such Distribution to such extent shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage).

4. PURCHASE RIGHTS; FUNDAMENTAL TRANSACTIONS.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 2 above, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock or shares of stock convertible into Common Stock (the "**Purchase Rights**"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Maximum Percentage) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Maximum Percentage, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Maximum Percentage); further provided that in the event of any Purchase Rights due in relation to a grant, issue or sale to record holders of shares of stock convertible into Common Stock, the amount of Purchase Rights to be received by the Holder shall be determined by calculating the Purchase Rights the holders of the record holders of shares of stock Convertible into Common Stock received per share of Common Stock underlying such class of stock convertible into Common Stock.

(b) Fundamental Transactions. The Company shall not enter into or be party to a Fundamental Transaction unless (i) the Successor Entity assumes in writing all of the obligations of the Company under this Warrant and the other Transaction Documents (as defined in the Securities Purchase Agreement) in accordance with the provisions of this Section 4(b) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder prior to such Fundamental Transaction, including agreements to deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant, including, without limitation, which is exercisable for a corresponding number of shares of capital stock equivalent to the shares of Common Stock acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the exercise price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such adjustments to the number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose common stock is quoted on or listed for trading on an Eligible Market. Upon the consummation of each Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of the applicable Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein. Upon consummation of each Fundamental Transaction, the Successor Entity shall deliver to the Holder confirmation that there shall be issued upon exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of this Warrant prior to the applicable Fundamental Transaction, such shares of publicly traded common stock (or its equivalent) of the Successor Entity (including its Parent Entity) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant), as adjusted in accordance with the provisions of this Warrant. In addition to and not in substitution for any other rights hereunder, prior to the consummation of each Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to insure that the Holder will thereafter have the right to receive upon an exercise of this Warrant at any time after the consummation of the applicable Fundamental Transaction but prior to the Expiration Date, in lieu of the shares of the Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 3 and 4(a) above, which shall continue to be receivable thereafter)) issuable upon the exercise of the Warrant prior to such Fundamental Transaction, such shares of stock, securities, cash, assets or any other property whatsoever (including warrants or other purchase or subscription rights) which the Holder would have been entitled to receive upon the happening of the applicable Fundamental Transaction had this Warrant been exercised immediately prior to the applicable Fundamental Transaction (without regard to any limitations on the exercise of this Warrant).

(c) Application. The provisions of this Section 4 shall apply similarly and equally to successive Fundamental Transactions and Corporate Events and shall be applied as if this Warrant (and any such subsequent warrants, options or other instruments or securities) were fully exercisable and without regard to any limitations on the exercise of this Warrant (provided that the Holder shall continue to be entitled to the benefit of the Maximum Percentage, applied however with respect to shares of capital stock registered under the 1934 Act and thereafter receivable upon exercise of this Warrant (and any such subsequent warrants, options or other instruments or securities)).

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5. NONCIRCUMVENTION. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation (as defined in the Securities Purchase Agreement and including any certificate of designations), Bylaws (as defined in the Securities Purchase Agreement) or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms of this Warrant, and will at all times in good faith carry out all the provisions of this Warrant and take all action as may be required to protect the rights of the Holder. Without limiting the generality of the foregoing, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the exercise of this Warrant above the Exercise Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the exercise of this Warrant (or such other securities, cash, assets or other property then deliverable on exercise of this Warrant), and (iii) shall, so long as any of the SPA Warrants are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the exercise of the SPA Warrants, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the exercise of the SPA Warrants then outstanding (without regard to any limitations on exercise).

6. WARRANT HOLDER NOT DEEMED A SHAREHOLDER. Except as otherwise specifically provided herein, the Holder, solely in its capacity as a holder of this Warrant, shall not be entitled to vote or receive dividends or be deemed the holder of share capital of the Company for any purpose, nor shall anything contained in this Warrant be construed to confer upon the Holder, solely in its capacity as the Holder of this Warrant, any of the rights of a shareholder of the Company or any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise), receive notice of meetings, receive dividends or subscription rights, or otherwise, prior to the issuance to the Holder of the Warrant Shares which it is then entitled to receive upon the due exercise of this Warrant. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a shareholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company. Notwithstanding this Section 7, the Company shall provide the Holder with copies of the same notices and other information given to the shareholders of the Company generally, contemporaneously with the giving thereof to the shareholders; provided that the Company shall not be obligated to provide such information if it is filed with the SEC through EDGAR and available to the public through the EDGAR system.

7. REISSUANCE OF WARRANTS.

(a) Transfer of Warrant. If this Warrant is to be transferred pursuant to the terms and conditions of this Warrant, the Holder shall surrender this Warrant to the Company, whereupon the Company will promptly issue and deliver upon the order of the Holder a new Warrant (in accordance with Section 7(d)), registered as the Holder may reasonably request, representing the right to purchase the number of Warrant Shares being transferred by the Holder and, if less than the total number of Warrant Shares then underlying this Warrant is being transferred, a new Warrant (in accordance with Section 7(d)) to the Holder representing the right to purchase the number of Warrant Shares not being transferred. Prior to transferring this Warrant, the Holder shall inform the transferee of the total number of Warrant Shares then underlying this Warrant.

(b) Lost, Stolen or Mutilated Warrant. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of any indemnification undertaking by the Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of this Warrant, the Company shall execute and deliver to the Holder a new Warrant (in accordance with Section 7(d)) representing the right to purchase the Warrant Shares then underlying this Warrant.

(c) Exchangeable for Multiple Warrants. This Warrant is exchangeable, upon the surrender hereof by the Holder at the principal office of the Company, for a new Warrant or Warrants (in accordance with Section 7(d)) representing in the aggregate the right to purchase the number of Warrant Shares then underlying this Warrant, and each such new Warrant will represent the right to purchase such portion of such Warrant Shares as is designated by the Holder at the time of such surrender; provided, however, no warrants for fractional shares of Common Stock shall be given.

(d) Issuance of New Warrants. Whenever the Company is required to issue a new Warrant pursuant to the terms of this Warrant, such new Warrant (i) shall be of like tenor with this Warrant, (ii) shall represent, as indicated on the face of such new Warrant, the right to purchase the Warrant Shares then underlying this Warrant (or in the case of a new Warrant being issued pursuant to Section 7(a) or Section 7(c), the Warrant Shares designated by the Holder which, when added to the number of shares of Common Stock underlying the other new Warrants issued in connection with such issuance, does not exceed the number of Warrant Shares then underlying this Warrant), (iii) shall have an issuance date, as indicated on the face of such new Warrant which is the same as the Issuance Date, and (iv) shall have the same rights and conditions as this Warrant.

8. NOTICES. Whenever notice is required to be given under this Warrant, unless otherwise provided herein, such notice shall be given in accordance with Section 8(f) of the Securities Purchase Agreement. The Company shall provide the Holder with prompt written notice of all actions taken pursuant to this Warrant, including in reasonable detail a description of such action and the reason therefor. Without limiting the generality of the foregoing, the Company will give written notice to the Holder (i) as soon as practicable upon each adjustment of the Exercise Price and the number of Warrant Shares, setting forth in reasonable detail, and certifying, the calculation of such adjustment(s). If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock (other than a dividend payable solely in shares of Common Stock) or (ii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such dividend, distribution or transaction; provided that the Company shall not be obligated to provide such notice if the required information is filed with the SEC through EDGAR and available to the public through the EDGAR system. Notwithstanding anything to the contrary in this Section 8, the failure to deliver any notice under this Section 8 or any defect therein shall not affect the validity of the corporate action required to be described in such notice. Until the exercise of its, his or her Warrant or any portion of such Warrant, a Holder shall not have nor exercise any rights by virtue of ownership of a Warrant as a shareholder of the Company (including without limitation the right to notification of shareholder meetings or the right to receive any notice or other communication concerning the business and affairs of the Company other than as provided in this Section 8.

9. AMENDMENT AND WAIVER. Except as otherwise provided herein, the provisions of this Warrant (other than Section 1(f)) may be amended and the Company may take any action herein prohibited, or omit to perform any act herein required to be performed by it, only with the prior written consent of the Company and the Holder. The Holder shall be entitled, at its option, to the benefit of any amendment of any other similar warrant issued under the Securities Purchase Agreement (excluding any warrants delivered to the Placement Agent or its Affiliates). No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

10. SEVERABILITY. If any provision of this Warrant is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Warrant so long as this Warrant as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the prohibited nature, invalidity or unenforceability of the provision(s) in question does not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

11. GOVERNING LAW. This Warrant shall be governed by and construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Warrant shall be governed by, the internal laws of the State of New York. The Company hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Nothing contained herein shall be deemed or operate to preclude the Holder from bringing suit or taking other legal action against the Company in any other jurisdiction to collect on the Company's obligations to the Holder or to enforce a judgment or other court ruling in favor of the Holder. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS WARRANT OR ANY TRANSACTION CONTEMPLATED HEREBY.**

12. CONSTRUCTION; HEADINGS. This Warrant shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any Person as the drafter hereof. The headings of this Warrant are for convenience of reference and shall not form part of, or affect the interpretation of, this Warrant.

13. DISPUTE RESOLUTION. In the case of a dispute as to the determination of the Exercise Price, the Closing Sale Price, the Bid Price or fair market value or the arithmetic calculation of the Warrant Shares (as the case may be), the Company or the Holder (as the case may be) may submit the disputed determinations or arithmetic calculations (as the case may be) via facsimile (i) within two (2) Business Days after receipt of the applicable notice giving rise to such dispute to the Company or the Holder (as the case may be) or (ii) if no notice gave rise to such dispute, at any time after the Holder or the Company (as the case may be) learned of the circumstances giving rise to such dispute. If the Holder and the Company are unable to agree upon such determination or calculation (as the case may be) of the Exercise Price, the Closing Sale Price, the Bid Price or fair market value or the number of Warrant Shares (as the case may be) within three (3) Business Days of such disputed determination or arithmetic calculation being submitted to the Company or the Holder (as the case may be), then the Company shall, within two (2) Business Days submit via facsimile (a) the disputed arithmetic calculation of the Warrant Shares, the disputed determination of the Exercise Price, the Closing Sale Price, the Bid Price, fair market value or otherwise (as the case may be) to an independent, reputable investment bank of nationally recognized standing or other independent professional organization of equal reputation and standing selected jointly by the Holder and the Company (each proposed organization being subject to the consent of the other party, with such consent not to be unreasonably withheld, conditioned or delayed) or (b) if acceptable to the Holder, the disputed arithmetic calculation of the Warrant Shares to the Company's independent, outside accountant. The Company shall request the investment bank, professional organization or the accountant (as the case may be) to perform at the Company's expense the determinations or calculations (as the case may be) and notify the Company and the Holder of the results no later than ten (10) Business Days from the time it receives such disputed determinations or calculations (as the case may be). Such investment bank's, professional organization's or accountant's determination or calculation (as the case may be) shall be binding upon all parties absent demonstrable error. The party whose determination or calculation is furthest from that determined or calculation by the investment bank or accountant shall pay the costs of such determination or calculation.

14. REMEDIES, CHARACTERIZATION, OTHER OBLIGATIONS, BREACHES AND INJUNCTIVE RELIEF. The remedies provided in this Warrant shall be cumulative and in addition to all other remedies available under this Warrant and the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the right of the Holder to pursue actual or consequential damages for any failure by the Company to comply with the terms of this Warrant. The Company covenants to the Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, exercises and the like (and the computation thereof) shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder may cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the holder of this Warrant may be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to the Holder that is reasonably requested by the Holder to enable the Holder to confirm the Company's compliance with the terms and conditions of this Warrant (including, without limitation, compliance with Section 2 hereof). The issuance of shares and certificates for shares as contemplated hereby upon the exercise of this Warrant shall be made without charge to the Holder or such shares for any issuance or stamp tax or other costs in respect thereof, provided that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than the Holder or its agent on its behalf.

15. TRANSFER. This Warrant may be offered for sale, sold, transferred or assigned without the consent of the Company. The Holder represents that by accepting this Warrant it understands that this Warrant and any securities obtainable upon exercise of this Warrant have not been registered for sale under Federal or state securities laws and are being offered and sold to the Holder pursuant to one or more exemptions from the registration requirements of such securities laws. In the absence of an effective registration of such securities or an exemption therefrom, any certificates for such securities shall bear the legend set forth on the first page hereof. The Holder understands that it must bear the economic risk of its investment in this Warrant and any securities obtainable upon exercise of this Warrant for an indefinite period of time, as this Warrant and such securities have not been registered under Federal or state securities laws and therefore cannot be sold unless subsequently registered under such laws, unless an exemption from such registration is available.

16. DTC Accounts. Notwithstanding anything to the contrary in this Warrant, the Company shall not be obligated herein to credit any restricted securities, including any Warrant Shares if so restricted, to the Holder's DTC account, and any obligation hereunder to credit shares to a Holder's DTC account shall only apply to unrestricted securities.

17. CERTAIN DEFINITIONS. For purposes of this Warrant, the following terms shall have the following meanings:

(a) "**Bid Price**" means, for any security as of the particular time of determination, the bid price for such security on the Principal Market as reported by Bloomberg as of such time of determination, or, if the Principal Market is not the principal securities exchange or trading market for such security, the bid price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg as of such time of determination, or if the foregoing does not apply, the bid price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg as of such time of determination, or, if no bid price is reported for such security by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) (the "**Pink Sheets**") as of such time of determination. If the Bid Price cannot be calculated for a security as of the particular time of determination on any of the foregoing bases, the Bid Price of such security as of such time of determination shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such

(b) "**Bloomberg**" means Bloomberg, L.P.

(c) "**Business Day**" means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(d) "**Closing Sale Price**" means, for any security as of any date, the last closing trade price, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing trade price (as the case may be) then the last trade price of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last trade price of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last trade price of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no last trade price is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of all of the market makers for such security as reported in the Pink Sheets. If the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(e) "**Common Stock**" means (i) the Company's shares of common stock, $0.0001 par value per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(f) "**Convertible Securities**" means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(g) "**Eligible Market**" means the OTCQX marketplace of the OTC Markets Group, Inc., the OTCQB marketplace of the OTC Markets Group, Inc., The New York Stock Exchange, Inc., the NYSE Amex Equities, The NASDAQ Global Select Market, The NASDAQ Global Market or The NASDAQ Capital Market.

(h) "**Expiration Date**" means the date that is the five year anniversary of the closing of the mergers contemplated by the Merger Agreement (as defined in the Warrant Amendment Agreement, dated as of September 28, 2020, by and between the Company and the Holder).

(i) "**Fundamental Transaction**" means that (i) the Company or any of its Subsidiaries shall, directly or indirectly, in one or more related transactions, (1) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (2) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (3) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (4) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (ii) any "person" or "group" (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) becomes the "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(j) "**Options**" means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(k) "**Parent Entity**" of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(l) "**Person**" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(m) "**Principal Market**" means the Eligible Market that is the principal securities exchange market for the Common Stock.

(n) "**Successor Entity**" means the Person (or, if so elected by the Holder, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Holder, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(o) "**Trading Day**" means any day on which the Common Stock is traded on the Principal Market.

(p) "**Voting Stock**" of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

(q) "**VWAP**" means, for any security as of any date, the dollar volume-weighted average price for such security on the Principal Market (or, if the Principal Market is not the principal trading market for such security, then on the principal securities exchange or securities market on which such security is then traded) during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "Volume at Price" function or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Company and the Holder. If the Company and the Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 13. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

[*signature page follows*]

IN WITNESS WHEREOF, the Company has caused this Warrant to Purchase Common Stock to be duly executed as of the Issuance Date set out above.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

EXHIBIT A

EXERCISE NOTICE

TO BE EXECUTED BY THE REGISTERED HOLDER TO EXERCISE THIS WARRANT TO PURCHASE COMMON STOCK

PETROS PHARMACEUTICALS, INC.

The undersigned holder hereby exercises the right to purchase of the shares of Common Stock ("**Warrant Shares**") of Petros Pharmaceuticals, Inc., a Delaware corporation (the "**Company**"), evidenced by Series F Warrant No. (the "**Warrant**"). Capitalized terms used herein and not otherwise defined shall have the respective meanings set forth in the Warrant.

1. Form of Exercise Price. The Holder intends that payment of the Exercise Price shall be made as:

_____ a "Cash Exercise" with respect to _____ Warrant Shares; and/or

_____ a "Cashless Exercise" with respect to _____ Warrant Shares.

In the event that the Holder has elected a Cashless Exercise with respect to some or all of the Warrant Shares to be issued pursuant hereto, the Holder hereby represents and warrants that (i) this Exercise Notice was executed by the Holder at [a.m.][p.m.] on the date set forth below and (ii) if applicable, the Bid Price as of such time of execution of this Exercise Notice was $.

2. Payment of Exercise Price. The Holder shall pay the Aggregate Exercise Price in the sum of $ to the Company in accordance with the terms of the Warrant.

3. Delivery of Warrant Shares and Net Number of shares of Common Stock. The Company shall deliver to Holder, or its designee or agent as specified below, shares of Common Stock in respect of the exercise contemplated hereby. Delivery shall be made to Holder, or for its benefit, to the following address:

Date: _____

Name of Registered Holder

By: _____
Name:
Title:

Account Number: _____
(if shares are delivered by electronic book entry transfer)

Transaction Code Number: _____
(if shares are delivered by electronic book entry transfer)

EXHIBIT B

ACKNOWLEDGMENT

The Company hereby acknowledges this Exercise Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Transfer Agent Instructions dated _____, 20__, from the Company and acknowledged and agreed to by _____.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

Exhibit 4.4

SERIES G COMMON STOCK PURCHASE WARRANT

PETROS PHARMACEUTICALS, INC.

Warrant Shares: Initial Exercise Date:
Issue Date:

THIS AMENDED AND RESTATED SERIES G COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date of issuance (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the five year anniversary of the closing of the mergers contemplated by the Merger Agreement (as defined in the Warrant Amendment Agreement, dated as of September 28, 2020, by and between the Company and the Holder) ("Termination Date") but not thereafter, to subscribe for and purchase from Petros Pharmaceuticals, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated December 17, 2018, among Neurotrope, Inc. and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise") and, by 12:00 p.m. (Eastern time) on the earlier of (i) the second Trading Day and (ii) the last Trading Day of the applicable Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date said Notice of Exercise is delivered to the Company, payment of the aggregate Exercise Price of the shares thereby purchased pursuant to the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank or, if available, pursuant to the cashless exercise procedure specified in Section 2(c) below if specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be $3.50, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, and there is also no effective registration statement registering the resale by the Holder of the Warrant Shares, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) × (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(64) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered to the Company within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c). For avoidance of doubt, except as set forth in Section 2(d)(iv), the Company shall not be required to pay cash if it cannot deliver registered Warrant Shares upon settlement.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the foregoing does not apply, the bid price of the Common Stock in the over-the-counter market on the electronic bulletin board for such Common Stock as reported by Bloomberg as of such time of determination, (c) if no bid price is reported for the Common Stock by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for the Common Stock as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC) (the "Pink Sheets") as of such time of determination, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the foregoing does not apply, the bid price of the Common Stock in the over-the-counter market on the electronic bulletin board for such Common Stock as reported by Bloomberg as of such time of determination, (c) if no bid price is reported for the Common Stock by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for the Common Stock as reported in the Pink Sheets as of such time of determination, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, if the conditions of a cashless exercise are otherwise met, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price (other than in the case of a cashless exercise) to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise by delivering written notice to the Company at any time prior to the Company delivering such Warrant Shares.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any failure due solely to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder was entitled to receive upon such exercise but did not receive (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver, but did not deliver, to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith.

To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith.

For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be [4.99%] [9.99%] of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time while this Warrant is outstanding the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all record holders of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities (other than as contemplated by Section 3(a) above), property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, exclusive lease, exclusive license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, or (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, if the Company is not the surviving entity in the Fundamental Transaction or the Common Stock is converted into the right to receive the Alternate Consideration only in the Fundamental Transaction, the Holder shall have the right to receive, in lieu of each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the same securities and/or other property as would have been paid for a Warrant Share as if such Warrant Share were outstanding on and as of the closing of such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant) (the "Alternate Consideration"). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Warrant and to covenant to, at the option of the Holder, deliver to the Holder in exchange for this Warrant a warrant of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for the Alternate Consideration (without regard to any limitations on the exercise of this Warrant), and with an exercise price which applies the exercise price hereunder to such Alternate Consideration consistent with this Section 3(d). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

e) Reserved.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall contemporaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issue Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant

will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of this Warrant (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Warrant), and hereby irrevocably waives, and agrees not to assert in any action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an action or proceeding to enforce any provisions of this Warrant, then the prevailing party in such action or proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: PETROS PHARMACEUTICALS, INC.

(1) The undersigned hereby elects to purchase Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized Signatory: _____

Title of Authorized
Signatory: _____

Date: _____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: ____ __ ,____

Holder's Signature: _____

Holder's Address: _____

Exhibit 4.5

SERIES H COMMON STOCK PURCHASE WARRANT

PETROS PHARMACEUTICALS, INC.

Warrant Shares: Initial Exercise Date:
Issue Date:

THIS SERIES H COMMON STOCK PURCHASE WARRANT (the "Warrant") certifies that, for value received, _____ or its assigns (the "Holder") is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date of issuance (the "Initial Exercise Date") and on or prior to 5:00 p.m. (New York City time) on the five year anniversary of the closing of the mergers contemplated by the Merger Agreement (as defined in the Warrant Amendment Agreement, dated as of September 28, 2020, by and between Neurotrope, Inc. and the Holder) (the "Termination Date") but not thereafter, to subscribe for and purchase from Petros Pharmaceuticals, Inc., a Delaware corporation (the "Company"), up to _____ shares (as subject to adjustment hereunder, the "Warrant Shares") of Common Stock. The purchase price of one share of Common Stock under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

Section 1. Definitions. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Securities Purchase Agreement (the "Purchase Agreement"), dated January 22, 2020, among Neurotrope, Inc. and the purchasers signatory thereto.

Section 2. Exercise.

a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Exercise Date and on or before the Termination Date by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form annexed hereto (the "Notice of Exercise") and, by 12:00 p.m. (Eastern time) on the earlier of (i) the second Trading Day and (ii) the last Trading Day of the applicable Standard Settlement Period (as defined in Section 2(d)(i) herein) following the date said Notice of Exercise is delivered to the Company, payment of the aggregate Exercise Price of the shares thereby purchased pursuant to the applicable Notice of Exercise by wire transfer or cashier's check drawn on a United States bank or, if available, pursuant to the cashless exercise procedure specified in Section 2(c) below if specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise form be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within five (5) Trading Days of the date the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

b) Exercise Price. The exercise price per share of Common Stock under this Warrant shall be $1.50, subject to adjustment hereunder (the "Exercise Price").

c) Cashless Exercise. If at the time of exercise hereof there is no effective registration statement registering, or the prospectus contained therein is not available for the issuance of the Warrant Shares to the Holder, and there is also no effective registration statement registering the resale by the Holder of the Warrant Shares, then this Warrant may also be exercised, in whole or in part, at such time by means of a "cashless exercise" in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) × (X)] by (A), where:

(A) = as applicable: (i) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise if such Notice of Exercise is (1) both executed and delivered pursuant to Section 2(a) hereof on a day that is not a Trading Day or (2) both executed and delivered pursuant to Section 2(a) hereof on a Trading Day prior to the opening of "regular trading hours" (as defined in Rule 600(b)(68) of Regulation NMS promulgated under the federal securities laws) on such Trading Day, (ii) at the option of the Holder, either (y) the VWAP on the Trading Day immediately preceding the date of the applicable Notice of Exercise or (z) the Bid Price of the Common Stock on the principal Trading Market as reported by Bloomberg L.P. ("Bloomberg") as of the time of the Holder's execution of the applicable Notice of Exercise if such Notice of Exercise is executed during "regular trading hours" on a Trading Day and is delivered to the Company within two (2) hours thereafter (including until two (2) hours after the close of "regular trading hours" on a Trading Day) pursuant to Section 2(a) hereof or (iii) the VWAP on the date of the applicable Notice of Exercise if the date of such Notice of Exercise is a Trading Day and such Notice of Exercise is both executed and delivered pursuant to Section 2(a) hereof after the close of "regular trading hours" on such Trading Day;

(B) = the Exercise Price, as adjusted hereunder; and

(X) = the number of Warrant Shares that would be issuable upon exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take any position contrary to this Section 2(c). For avoidance of doubt, except as set forth in Section 2(d)(iv), the Company shall not be required to pay cash if it cannot deliver registered Warrant Shares upon settlement.

"Bid Price" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the bid price of the Common Stock for the time in question (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the foregoing does not apply, the bid price of the Common Stock in the over-the-counter market on the electronic bulletin board for such Common Stock as reported by Bloomberg as of such time of determination, (c) if no bid price is reported for the Common Stock by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for the Common Stock as reported on the Pink Open Market (the "Pink Sheets") as of such time of determination, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

"VWAP" means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if the foregoing does not apply, the bid price of the Common Stock in the over-the-counter market on the electronic bulletin board for such Common Stock as reported by Bloomberg as of such time of determination, (c) if no bid price is reported for the Common Stock by Bloomberg as of such time of determination, the average of the bid prices of all of the market makers for the Common Stock as reported in the Pink Sheets as of such time of determination, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Purchasers of a majority in interest of the Securities then outstanding and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company.

Notwithstanding anything herein to the contrary, on the Termination Date, if the conditions of a cashless exercise are otherwise met, this Warrant shall be automatically exercised via cashless exercise pursuant to this Section 2(c).

d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by the Transfer Agent to the Holder by crediting the account of the Holder's or its designee's balance account with The Depository Trust Company through its Deposit or Withdrawal at Custodian system ("DWAC") if the Company is then a participant in such system and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by Holder or (B) this Warrant is being exercised via cashless exercise, and otherwise by physical delivery of a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by the date that is the earliest of (i) two (2) Trading Days after the delivery to the Company of the Notice of Exercise, (ii) one (1) Trading Day after delivery of the aggregate Exercise Price (other than in the case of a cashless exercise) to the Company and (iii) the number of Trading Days comprising the Standard Settlement Period after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares, provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within the earlier of (i) two (2) Trading Days and (ii) the number of Trading Days comprising the Standard Settlement Period following delivery of the Notice of Exercise. The Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable. As used herein, "Standard Settlement Period" means the standard settlement period, expressed in a number of Trading Days, on the Company's primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Exercise.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise by delivering written notice to the Company at any time prior to the Company delivering such Warrant Shares.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to cause the Transfer Agent to transmit to the Holder the Warrant Shares in accordance with the provisions of Section 2(d)(i) above pursuant to an exercise on or before the Warrant Share Delivery Date (other than any failure due solely to any action or inaction by the Holder with respect to such exercise), and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder was entitled to receive upon such exercise but did not receive (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the shares of Common Stock so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver, but did not deliver, to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of shares of Common Stock that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder purchases Common Stock having a total purchase price of $11,000 to cover a Buy-In with respect to an attempted exercise of shares of Common Stock with an aggregate sale price giving rise to such purchase obligation of $10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder $1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver shares of Common Stock upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder; provided, however, that in the event that Warrant Shares are to be issued in a name other than the name of the Holder, this Warrant when surrendered for exercise shall be accompanied by the Assignment Form attached hereto duly executed by the Holder and the Company may require, as a condition thereto, the payment of a sum sufficient to reimburse it for any transfer tax incidental thereto. The Company shall pay all Transfer Agent fees required for same-day processing of any Notice of Exercise and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its stockholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

e) Holder's Exercise Limitations. The Company shall not effect any exercise of this Warrant, and a Holder shall not have the right to exercise any portion of this Warrant, pursuant to Section 2 or otherwise, to the extent that after giving effect to such issuance after exercise as set forth on the applicable Notice of Exercise, the Holder (together with the Holder's Affiliates, and any other Persons acting as a group together with the Holder or any of the Holder's Affiliates (such Persons, "Attribution Parties")), would beneficially own in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by the Holder and its Affiliates and Attribution Parties shall include the number of shares of Common Stock issuable upon exercise of this Warrant with respect to which such determination is being made, but shall exclude the number of shares of Common Stock which would be issuable upon (i) exercise of the remaining, nonexercised portion of this Warrant beneficially owned by the Holder or any of its Affiliates or Attribution Parties and (ii) exercise or conversion of the unexercised or nonconverted portion of any other securities of the Company (including, without limitation, any other Common Stock Equivalents) subject to a limitation on conversion or exercise analogous to the limitation contained herein beneficially owned by the Holder or any of its Affiliates or Attribution Parties. Except as set forth in the preceding sentence, for purposes of this Section 2(e), beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith.

To the extent that the limitation contained in this Section 2(e) applies, the determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable shall be in the sole discretion of the Holder, and the submission of a Notice of Exercise shall be deemed to be the Holder's determination of whether this Warrant is exercisable (in relation to other securities owned by the Holder together with any Affiliates and Attribution Parties) and of which portion of this Warrant is exercisable, in each case subject to the Beneficial Ownership Limitation, and the Company shall have no obligation to verify or confirm the accuracy of such determination. In addition, a determination as to any group status as contemplated above shall be determined in accordance with Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder, it being acknowledged by the Holder that the Company is not representing to the Holder that such calculation is in compliance with Section 13(d) of the Exchange Act and the Holder is solely responsible for any schedules required to be filed in accordance therewith.

For purposes of this Section 2(e), in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as reflected in (A) the Company's most recent periodic or annual report filed with the Commission, as the case may be, (B) a more recent public announcement by the Company or (C) a more recent written notice by the Company or the Transfer Agent setting forth the number of shares of Common Stock outstanding. Upon the written or oral request of a Holder, the Company shall within two Trading Days confirm orally and in writing to the Holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including this Warrant, by the Holder or its Affiliates or Attribution Parties since the date as of which such number of outstanding shares of Common Stock was reported. The "Beneficial Ownership Limitation" shall be 4.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon exercise of this Warrant. The Holder, upon notice to the Company, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 2(e), provided that the Beneficial Ownership Limitation in no event exceeds 9.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon exercise of this Warrant held by the Holder and the provisions of this Section 2(e) shall continue to apply. Any increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Company. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 2(e) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of this Warrant.

Section 3. Certain Adjustments.

a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on shares of its Common Stock or any other equity or equity equivalent securities payable in shares of Common Stock (which, for avoidance of doubt, shall not include any shares of Common Stock issued by the Company upon exercise of this Warrant), (ii) subdivides outstanding shares of Common Stock into a larger number of shares, (iii) combines (including by way of reverse stock split) outstanding shares of Common Stock into a smaller number of shares, or (iv) issues by reclassification of shares of the Common Stock any shares of capital stock of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(a) shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

b) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(a) above, if at any time while this Warrant is outstanding the Company grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to all record holders of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's right to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

c) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to all holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities (other than as contemplated by Section 3(a) above), property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof, including without limitation, the Beneficial Ownership Limitation) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

d) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Company with or into another Person, (ii) the Company, directly or indirectly, effects any sale, exclusive lease, exclusive license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, or (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent exercise of this Warrant, if the Company is not the surviving entity in the Fundamental Transaction or the Common Stock is converted into the right to receive the Alternate Consideration only in the Fundamental Transaction, the Holder shall have the right to receive, in lieu of each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant), the same securities and/or other property as would have been paid for a Warrant Share as if such Warrant Share were outstanding on and as of the closing of such Fundamental Transaction (without regard to any limitation in Section 2(e) on the exercise of this Warrant) (the "Alternate Consideration"). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. The Company shall cause any successor entity in a Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant in accordance with the provisions of this Warrant and to covenant to, at the option of the Holder, deliver to the Holder in exchange for this Warrant a warrant of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for the Alternate Consideration (without regard to any limitations on the exercise of this Warrant), and with an exercise price which applies the exercise price hereunder to such Alternate Consideration consistent with this Section 3(d). Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

e) Reserved.

f) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 3, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding treasury shares, if any) issued and outstanding.

g) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Company shall authorize the granting to all holders of the Common Stock rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Company shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Company is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property, or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least 10 calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall contemporaneously file such notice with the Commission pursuant to a Current Report on Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form attached hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be cancelled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Trading Days of the date the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the Issue Date and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

Section 5. Miscellaneous.

a) No Rights as Stockholder Until Exercise. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a stockholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3.

b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any stock certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or stock certificate, if mutilated, the Company will make and deliver a new Warrant or stock certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or stock certificate.

c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then, such action may be taken or such right may be exercised on the next succeeding Business Day.

d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Stock a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of executing stock certificates to execute and issue the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such reasonable action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of the Trading Market upon which the Common Stock may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue).

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such actions as may be necessary or appropriate to protect the rights of Holder as set forth in this Warrant against impairment. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use commercially reasonable efforts to obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any public regulatory body or bodies having jurisdiction thereof.

e) Jurisdiction. All questions concerning the construction, validity, enforcement and interpretation of this Warrant shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party agrees that all legal proceedings concerning the interpretations, enforcement and defense of this Warrant (whether brought against a party hereto or its respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the City of New York, Borough of Manhattan for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein (including with respect to the enforcement of this Warrant), and hereby irrevocably waives, and agrees not to assert in any action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such action or proceeding is improper or is an inconvenient venue for such proceeding. Each party hereby irrevocably waives personal service of process and consents to process being served in any such action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Warrant and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by law. If any party shall commence an action or proceeding to enforce any provisions of this Warrant, then the prevailing party in such action or proceeding shall be reimbursed by the non-prevailing party for its reasonable attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

f) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered, and the Holder does not utilize cashless exercise, will have restrictions upon resale imposed by state and federal securities laws.

g) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Purchase Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

h) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Purchase Agreement.

i) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Stock or as a stockholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

j) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

k) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

l) Amendment. This Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

m) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

n) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

****

(Signature Page Follows)

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

PETROS PHARMACEUTICALS, INC.

By: _____
Name:
Title:

NOTICE OF EXERCISE

TO: PETROS PHARMACEUTICALS, INC.

(1) The undersigned hereby elects to purchase Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

☐ in lawful money of the United States; or

☐ if permitted the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

_____

The Warrant Shares shall be delivered to the following DWAC Account Number:

_____

_____

_____

[SIGNATURE OF HOLDER]

Name of Investing Entity: _____

Signature of Authorized Signatory of Investing Entity: _____

Name of Authorized
Signatory: _____

Title of Authorized
Signatory: _____

Date: _____

EXHIBIT B

ASSIGNMENT FORM

(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: _____
(Please Print)

Address: _____
(Please Print)

Phone Number: _____

Email Address: _____

Dated: ____ __ ,____

Holder's Signature: _____

Holder's Address: _____

Exhibit 5.1

666 Third Avenue
New York, NY 10017
212 935 3000
mintz.com

October 21, 2020

Petros Pharmaceuticals, Inc.
1185 Avenue of the Americas, 3rd Floor
New York, NY 10036

Ladies and Gentlemen:

We have acted as counsel to Petros Pharmaceuticals, Inc. (the "Company") in connection with the filing by the Company of a Registration Statement on Form S-4 (as amended, the "Registration Statement") with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement provides for the registration by the Company of up to 143,968,872 shares of its common stock, par value $0.0001 per share (the "Common Stock"), 500 shares of its preferred stock, par value $0.0001 per share (the "Preferred Stock") and warrants to purchase up to 22,011,258 shares of Common Stock (the "Warrants" and, together with the Common Stock and the Preferred Stock, the "Securities") upon the consummation of (1) the merger of PM Merger Sub 1, LLC ("Merger Sub 1"), with and into Metuchen Pharmaceuticals, LLC ("Metuchen"), with Metuchen surviving as wholly-owned subsidiary of the Company (the "Metuchen Merger") and (2) the merger of PN Merger Sub 2, Inc. ("Merger Sub 2") with and into Neurotrope, Inc. ("Neurotrope"), with Neurotrope surviving as a wholly-owned subsidiary of Petros (the "Neurotrope Merger" and, together with the Metuchen Merger, the "Mergers"), pursuant to the Agreement and Plan of Merger, dated May 17, 2020, as amended on July 23, 2020 and on September 30, 2020, by and among the Company, Petros, Merger Sub 1, Merger Sub 2 and Metuchen (the "Merger Agreement").

In connection with this opinion, we have examined the actions taken by the Company in connection with the authorization of the issuance of the Securities, and such documents as we have deemed necessary for the purpose of rendering this opinion. In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such copies. As to questions of fact material to this opinion, we have relied upon certificates or comparable documents of public officials and of officers and representatives of the Company.

Our opinion is limited to the federal laws of the United States, the General Corporation Law of the State of Delaware and the state laws of the State of New York and we express no opinion with respect to the laws of any other jurisdiction. No opinion is expressed herein with respect to the qualification of the Securities under the securities or blue sky laws of any state or any foreign jurisdiction.

Please note that we are opining only as to the matters expressly set forth herein, and no opinion should be inferred as to any other matters. This opinion is based upon currently existing statutes, rules, regulations and judicial decisions, and we disclaim any obligation to advise you of any change in any of these sources of law or subsequent legal or factual developments which might affect any matters or opinions set forth herein.

Based upon and subject to the foregoing, it is our opinion that, (i) when the shares of Common Stock and Preferred Stock are issued and delivered by the Company in accordance with the Merger Agreement, the shares of Common Stock and Preferred Stock will be validly issued, fully paid and non-assessable, (ii) the Warrants, when issued as set forth in the Registration Statement will be legal valid and binding obligations of the Company, enforceable against the Company in accordance with their terms and (iii) the shares of Common Stock issuable upon exercise of the Warrants, when issued upon exercise of the Warrants against payment therefor as set forth in the Registration Statement, will be validly issued, fully paid and non-assessable.

We understand that you wish to file this opinion with the Commission as an exhibit to the Registration Statement in accordance with the requirements of Item 601(b)(5) of Regulation S-K promulgated under the Securities Act and to reference the firm's name under the caption "Legal Matters" in the prospectus which forms part of the Registration Statement, and we hereby consent thereto. In giving this consent, we do not admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Exhibit 10.3

EXECUTION VERSION
CONFIDENTIAL

PURSUANT TO ITEM 601(b)(10) OF REGULATION S-K, CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

LICENSE AND COMMERCIALIZATION AGREEMENT

dated as of September 30, 2016

by and between

VIVUS, INC.

and

METUCHEN PHARMACEUTICALS LLC

TABLE OF CONTENTS

LICENSE AND COMMERCIALIZATION AGREEMENT

THIS LICENSE AND COMMERCIALIZATION AGREEMENT (the "**Agreement**") is dated as of the 30th day of September, 2016, by and between **VIVUS, INC.**, a Delaware corporation having its principal offices at 351 E. Evelyn Ave., Mountain View, CA 94041 ("**VIVUS**"), and Metuchen Pharmaceuticals LLC, a limited liability company organized under the laws of Delaware, having a place of business at 11 Commerce Drive, 1st Floor, Cranford, New Jersey 07016 ("**Licensee**"). VIVUS and Licensee are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, VIVUS has received a license to certain intellectual property rights from Mitsubishi Tanabe Pharma Corporation (as successor in interest to Tanabe Seiyaku Co., Ltd., "**MTPC**") relating to a therapeutic drug known as STENDRA™ (avanafil);

WHEREAS, VIVUS has obtained all required regulatory approval from the FDA for the right to market and commercialize STENDRA in the United States;

WHEREAS, VIVUS desires to grant to Licensee, and Licensee desires to receive, a license for the commercialization and exploitation of STENDRA in the United States and the rest of the Licensee Territory (as defined below) upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants and conditions contained in this Agreement, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

As used in this Agreement, the following initially capitalized terms, whether used in the singular or plural form, shall have the meanings set forth in this ARTICLE 1.

1.1 "**Action Date**" means, with respect to a legal action in connection with Product Infringement, the date that is the earlier of (a) ninety (90) days following notice pursuant to Section 8.4(a) of a Product Infringement and (b) fifteen (15) Business Days before the date after which a legal action would be substantially limited or compromised with respect to the remedies available against the alleged Third Party infringer.

1.2 "**Affiliate**" means, with respect to a Person, any current or future person, firm, trust, corporation, company, partnership, or other entity or combination thereof that directly or indirectly controls, is controlled by or is under common control with such Person. For the purposes of this definition, the word "control" (including, with correlative meaning, the terms "controlled by" or "under the common control with") means (a) ownership of fifty percent (50%) or more of the voting and equity rights of such person, firm, trust, corporation, company, partnership or other entity or combination thereof, or (b) the power to direct the management of such person, firm, trust, corporation, company, partnership, or other entity or combination thereof.

1.3 "**Alliance Manager**" has the meaning set forth in Section 3.7.

1.4 "**Applicable Law**" means any and all laws, statutes, ordinances, regulations, permits, orders, decrees, judgments, directives, rulings or rules of any kind whatsoever that are promulgated by a federal, state, province, or other Governmental Authority, in each case pertaining to any of the activities contemplated by this Agreement, including any regulations promulgated by any Regulatory Authority in the Licensee Territory, all as amended from time to time.

1.5 "**Assigned Trademarks**" means the trademark registrations and applications for registration set forth on Exhibit A.

1.6 "**Auxilium Agreement**" means the License and Commercialization Agreement, dated as of October 10, 2013, by and between VIVUS, Inc. and Auxilium Pharmaceuticals, Inc., as amended from time to time.

1.7 "**Business Day**" means each day of the week excluding Saturday, Sunday or a day on which banking institutions in New York, New York, USA are closed.

1.8 "**Chapter 7 Case**" has the meaning set forth in Section 12.4.

1.9 "**Claim**" means all investigations, claims, suits, actions, cross-complaints, demands, rights, requests, arbitrations, mediations, causes of action, obligations, settlements or orders, whether at law, equity or otherwise, or whether sounding in tort, contract, equity, strict liability or any statutory or common law cause of action of any sort.

1.10 "**Commercialization**" means the marketing, Promotion, sale, offering for sale, importation and/or distribution of the Product, including activities directed to obtaining Pricing Approval. "**Commercialize**" has a correlative meaning.

1.11 "**Commercialization and Medical Affairs Plans**" shall mean the Commercialization Plan and the Medical Affairs Plan as such are defined in ARTICLE 4.

1.12 "**Commercially Reasonable Efforts**" means, with respect to a Party's obligations under this Agreement, the reasonable and good faith efforts normally used by a company in the pharmaceutical industry for a product (regardless of whether the product is owned by the company or the company has obtained rights to such product) having similar commercial potential, stage of development or lifecycle, medical/scientific, technical and regulatory profile, Intellectual Property protection, profitability, market competition, and other relevant factors.

1.13 "**Commercial Supply Agreement**" shall have the meaning set forth in Section 6.1.

1.14 "**Competing Product**" means a PDE-5 Inhibitor other than the Product.

1.15 "**Compound**" means all the compounds which are selective phosphodiesterase type-5 inhibitor, which compounds are contained within a claim of any unexpired VIVUS Patent no matter when filed or in a claim of a pending application for a VIVUS Patent no matter when filed which is being prosecuted in good faith by or on behalf of VIVUS, MTPC or its respective Affiliate, including without limitation the compound coded as T -1790 by MTPC, chemically known as (S)-4-(3-Chloro-4-methoxybenzylamino)-2-(2-hydroxymethylpyrrolidin-1-yl)-N- pyrimidin-2-ylmethyl-5-pyrimidinecarboxyamide and identified by the International Non Proprietary Name avanafil (each, a "**Compound**" and collectively, the "**Compounds**").

1.16 "**Confidential Information**" means, with respect to a Party (the "**disclosing Party**"), all confidential and proprietary Information of such disclosing Party that is disclosed to or accessed by the other Party (the "**receiving Party**") under this Agreement.

1.17 "**Control**" means, with respect to any material, Information, or Intellectual Property right, (a) the ownership thereof or the possession or a license or right thereto and (b) the possession by a Party under such material, Information, or Intellectual Property right of the right to grant to the other Party access, a license, or a sublicense (as applicable) to such material, Information, or Intellectual Property right on the terms and conditions set forth herein without violating the terms of any agreement between such Party and any Third Party in existence as of the Effective Date.

1.18 "**Debtor**" has the meaning set forth in Section 12.7.

1.19 "**Detail**" or "**Detailing**" means each separate face-to-face contact by a professional sales representative with a physician or other professional with authority to write prescriptions during which time the promotional message involving the Product is presented and is a topic of discussion and/or a sample of the Product is left with the physician or such other professional. When used as a verb, "**Detail**" shall mean to engage in a Detail.

1.20 "**Development**" means all activities that relate to obtaining, maintaining or expanding Regulatory Approval of the Product. This includes (a) research, preclinical testing, toxicology, formulation and clinical studies of Product; (b) preparation, submission, review, and development of data or information for the purpose of submission to a Regulatory Authority to obtain, maintain and/or expand Regulatory Approval of Product; and (c) post-Regulatory Approval product support for Product (including laboratory and clinical efforts directed toward the further understanding of the safety and efficacy of Product). For clarity, Development includes phase IV clinical trials of Product. "Develop" and "Developed" have correlative meanings.

1.21 "**Effective Date**" means October 1, 2016.

1.22 "**Equity Investor**" shall have the meaning set forth in Section 2.8(a).

1.23 "**FDA**" means the United States Food and Drug Administration or its successor.

1.24 "**FDA Assessment**" has the meaning set forth in Section 5.2(b).

1.25 "**FDA-Required Studies**" has the meaning set forth in Section 4.1(a).

1.26 "**FD&C Act**" means the United States Federal Food, Drug and Cosmetic Act.

1.27 "**Federal Arbitration Act**" has the meaning set forth in Section 13.2.

1.28 "**Field**" means any therapeutic use in humans.

1.29 "**Filing Party**" has the meaning set forth in Section 11.3(c).

1.30 "**Financing Default**" means (a) Licensee's default under the Financing Documents, or the occurrence of an event of default under the Financing Documents, if such default or event of default gives rise to a right by a Financing Entity to exercise remedies under the Financing Documents, and (b) any of (i) a consensual resolution of such default or event of default whereby Licensee agrees to assign this Agreement and Licensee's rights and obligations arising hereunder to a Financing Entity or a Qualified Assignee (with written notice of such resolution provided jointly by Licensee and such Financing Entity or Qualified Assignee to VIVUS), (ii) the entry of a final, non-appealable order by a court of competent jurisdiction authorizing the sale and/or assignment of this Agreement and Licensee's rights and obligations arising hereunder to a Financing Entity or Qualified Assignee, or (iii) the exercise by a Financing Entity of its rights and remedies as a secured creditor in respect of the Debt Facility under the Financing Documents in accordance with applicable law, provided that such Financing Entity provides written notice to VIVUS of such exercise of such rights and remedies.

1.31 "**Financing Document**" means any loan, security or other agreement or agreements pursuant to which a Financing Entity provides a Debt Facility to Licensee.

1.32 "**Financing Entity**" means any Person that provides Licensee with debt financing secured by an assignment of Licensee's contractual rights under this Agreement (including the License granted to Licensee hereunder, Licensee's rights in and to the Product Marketing Authorization, Licensee's right to grant sublicenses, and Licensee's rights to appoint JSC representatives and Alliance Managers) as collateral (a "**Debt Facility**") and each successor and assign of such Person's rights in and to such Debt Facility (but excluding any such Person and/or such Person's successors and/or assignees upon the exercise of remedies by such Person pursuant to the related Financing Documents). The Parties acknowledge that (i) Hercules Capital, Inc., as "Agent", and each of the "Lenders" (as such terms are defined in the Loan and Security Agreement dated as of September 30, 2016, by and between Licensee and Hercules Capital, Inc., as Agent, and the related Loan Documents as defined therein (the "**Hercules Loan Agreements**")), are Financing Entities and (ii) the Hercules Loan Agreements are Financing Documents.

1.33 "**GAAP**" has the meaning set forth in the definition of "Net Sales" in this ARTICLE 1.

1.34 "**Generic Product**" means, with respect to a Product in a given country of the Licensee Territory, any product sold in such country by a Third Party (other than a sublicensee of Licensee or any other Third Party authorized to sell such product by, or otherwise in the chain of distribution of, Licensee or a Licensee Affiliate or sublicensee) that (a) contains the same active ingredient(s) as the Product, or any base form, salt form, prodrug form, isomer, crystalline polymorph, hydrate or solvate of such active ingredients (but no additional pharmaceutically active ingredients beyond what is contained in the Product), and (b) is approved or registered for use in such country pursuant to any drug approval process based on reference to a Regulatory Approval for such Product held by VIVUS, Licensee or any of their respective Affiliates or sublicensees in such country or in another country.

1.35 "**Governmental Authority**" means any transnational, domestic or foreign federal, provincial, state or local governmental, regulatory or administrative authority (including any Regulatory Authority), department, court, agency or official, including any political subdivision thereof.

1.36 "**Hetero Litigation**" means the lawsuit filed on July 27, 2016 by VIVUS in the U.S. District Court for the District of New Jersey against Hetero USA, Inc., and Hetero Labs Limited (collectively with Hetero USA, Inc. ("**Hetero**").

1.37 "**IND**" means an Investigational New Drug Application, as defined in the FD&C Act.

1.38 "**Indemnified Claim**" has the meaning set forth in Section 10.3.

1.39 "**Indemnified Party**" has the meaning set forth in Section 10.3.

1.40 "**Indemnifying Party**" has the meaning set forth in Section 10.3.

1.41 "**Information**" means any data, results, and information of any type whatsoever, in any tangible or intangible form, including know-how, trade secrets, practices, techniques, methods, processes, procedures, inventions, developments, specifications, formulations, formulae, software, algorithms, marketing reports, expertise, stability, technology, pharmacological, biological, chemical, biochemical, toxicological, and clinical test data, analytical and quality control data, and stability data.

1.42 "**Intellectual Property**" means (a) United States or foreign issued patents or pending patent applications, and any and all divisionals, continuations, continuations-in-part, reissues, renewals, reexaminations, and extensions thereof, any counterparts claiming priority therefrom, utility models, patents of importation/confirmation, supplementary protection certificates, certificates of invention, national and multinational statutory invention registrations and similar statutory rights ("**Patents**"); (b) trademarks, service marks, certification marks, logos, trade names, trade dress, including all registrations and applications for registration of, and all goodwill associated with, the foregoing; (c) copyrights and registrations and applications for registration thereof; (d) confidential and proprietary methods, processes, techniques, devices, technology, assays, materials, trade secrets, inventions, ideas, designs, compositions, formulae, know-how, data, specifications, technical information, instructions, and other similar types of confidential and proprietary documentation, materials and information; and (e) any similar intellectual property or proprietary rights.

1.43 "**JAMS Rules**" has the meaning set forth in Section 13.2.

1.44 "**Joint Invention**" has the meaning set forth in Section 8.1.

1.45 "**Joint Patent**" has the meaning set forth in Section 8.3(b).

1.46 "**JSC**" has the meaning set forth in Section 3.1.

1.47 "**Knowledge of Licensee**" or any similar phrase means, with respect to any fact or matter, the actual knowledge of Greg Ford, Keith Lavan and Keith Rotenberg, after reasonable consultation with their direct reports.

1.48 "**Knowledge of VIVUS**" or any similar phrase means, with respect to any fact or matter, the actual knowledge of Seth H.Z. Fischer (Chief Executive Officer), John L. Slebir (Senior Vice President Business Development and General Counsel), Mark K. Oki (Chief Financial Officer and Chief Accounting Officer), Santosh T. Varghese (Chief Medical Officer), Ted Broman (Vice President, Chemistry, Manufacturing and Control), Deborah Larsen (Vice President, Marketing) and Sandra E. Wells (Vice President, Patents and Assistant General Counsel), after reasonable consultation with their direct reports.

1.49 "**Licensed Party**" means a Party in its capacity as licensee under the applicable licenses set forth in ARTICLE 2.

1.50 "**Licensee Indemnitees**" has the meaning set forth in Section 10.1.

1.51 "**Licensee Know-How**" means all Information (excluding any Patents) (a) that is Controlled by Licensee or its Affiliates as of the Effective Date or during the Term and (b) is reasonably necessary or useful for the research, Development, manufacture, use, importation, sale, or Commercialization of the Product in the Licensee Territory. For clarity, the Licensee Know-How does not include the VIVUS Know-How licensed to Licensee hereunder.

1.52 "**Licensee Patents**" means all Patents (a) that are Controlled by Licensee or its Affiliates as of the Effective Date or during the Term and (b) that disclose or claim any Product or the manufacture, use, importation, or sale thereof. For clarity, the Licensee Patents do not include the VIVUS Patents licensed to Licensee hereunder.

1.53 "**Licensee Technology**" means the Licensee Patents and Licensee Know-How.

1.54 "**Licensee Territory**" means the United States of America and its territories and possessions, including Puerto Rico and U.S. military bases abroad (collectively, the "**United States**"), Canada, South America and India.

1.55 "**Licensee Trademarks**" has the meaning set forth in Section 8.6.

1.56 "**Licensing Party**" means a Party in its capacity as licensor under the applicable licenses set forth in ARTICLE 2.

1.57 "**Losses**" means (a) all damages, judgments, or settlements payable to Third Parties; and (b) all legal expenses (including reasonable attorneys' fees and disbursements, reasonable expert and witness fees, reasonable fees and costs associated with any investigations, court costs and appeal bonds).

1.58 "**Manufacturing and Supply Agreement**" means that certain Manufacturing and Supply Agreement, dated as of September 1, 2013 by and between VIVUS and Sanofi Winthrope Industrie, as amended, including, for purposes of this definition, all agreements with Sanofi Winthrope Industrie or any of its Affiliates in support of the activities contemplated by such agreement.

1.59 "**Manufacturing Territory**" means all the countries in the world excluding Democratic People's Republic of Korea (North Korea), Republic of Korea (South Korea), Singapore, Malaysia, Thailand, Vietnam, and the Philippines.

1.60 "**MTPC**" means Mitsubishi Tanabe Pharma Corporation.

1.61 "**MTPC Agreement**" means that certain Agreement between VIVUS and MTPC (as successor in interest to Tanabe Seiyaku Co., Ltd.), effective as of December 28, 2000, as amended pursuant to the Amendment No. 1 to Agreement dated as of January 9, 2004, the Second Amendment to Agreement dated as of August 1, 2012, the Third Amendment to Agreement dated as of February 21, 2013, and the Fourth Amendment to Agreement, dated as of July 1, 2013, and as otherwise amended from time to time.

1.62 "**MTPC Agreement Net Sales**" means "Net Sales," as defined in the MTPC Agreement, but only to the extent that they relate to the Licensee Territory.

1.63 "**MTPC Milestone**" has the meaning set forth in Exhibit C.

1.64 "**MTPC Royalty Period**" means the "Royalty Period," as defined in the MTPC Agreement.

1.65 "**NDA**" means a New Drug Application, as defined in the FD&C Act.

1.66 "**Net Sales**" for purposes of this Agreement means the amount invoiced or otherwise billed by Licensee or its Affiliates or sublicensees ("**Selling Party**") for sales of a Product to a Third Party purchaser, less the following (collectively, "**Net Sales Deductions**"):

(a) discounts actually given on Product, including cash, trade and quantity discounts, price reduction or incentive programs (including sales coupons and co-payment programs), retroactive price adjustments with respect to sales of such Product, and charge-back payments;

(b) credits, refunds, returns or allowances actually allowed, paid, received or given, including credits, allowances, discounts and rebates to, and chargebacks from the account of customers for nonconforming, damaged, rejected, out-dated and returned, withdrawn or recalled Product or on account of retroactive price reductions affecting the Product;

(c) rebates, reimbursements, administrative fees or similar allowances actually granted to managed health care organizations or to federal, state and local governments in the Licensee Territory or any other organization that utilizes any governmental discount program with respect to the Product;

(d) inventory management agreement (IMA) fees, wholesaler fees, and specialty pharmacy charges, in each case, to the extent specifically attributable to the applicable Product;

(e) freight, postage, shipping and insurance charges actually allowed or paid for delivery of Product, to the extent billed as a separate line item by the Selling Party to the Third Party purchaser;

(f) taxes, duties or other governmental charges imposed on the sale of Product and actually paid by the Selling Party (as adjusted for rebates and refunds, but specifically excluding taxes based on net income of the Selling Party), to the extent billed as a separate line item by the Selling Party to the Third Party purchaser;

provided that all of the foregoing deductions shall be calculated in accordance with then-current generally accepted accounting principles in the Unites States, consistently applied during the applicable calculation period throughout the Selling Party's organization ("**GAAP**"). To the extent that Net Sales Deductions are based on estimates, such estimates will be adjusted to actual on a periodic basis.

A sale of a Product is deemed to occur in accordance with GAAP.

For sake of clarity and avoidance of doubt, the transfer of Product by a Selling Party or one of its Affiliates to another Affiliate of such Selling Party or to a sublicensee of such Selling Party for resale shall not be considered a sale; in such cases, Net Sales shall be determined based on the amount invoiced or otherwise billed by such Affiliate or sublicensee to an independent Third Party, less the Net Sales Deductions allowed under this Section.

1.67 "**Net Sales Deductions**" has the meaning set forth in the definition of "Net Sales" in this ARTICLE 1.

1.68 "**Orange Book**" means the FDA publication entitled "Approved Drug Products with Therapeutic Equivalence Evaluations" or any replacement thereof established or approved by the FDA.

1.69 "**PDE-5 Inhibitor**" means any product that operates as a phosphodiesterase type-5 inhibitor.

1.70 "**Permitted Assignment**" has the meaning set forth in Section 14.5.

1.71 "**Person**" means any natural person, corporation, firm, business trust, joint venture, association, organization, company, partnership or other business entity, or any government, or any agency or political subdivisions thereof.

1.72 "**Pricing Approval**" means the approval, agreement, determination, or governmental decision establishing the price or level of reimbursement for the Product, as required in a given jurisdiction.

1.73 "**Product**" means pharmaceutical compositions containing the Compound, including but not limited to that drug product known as STENDRA™, in the form, formulation, and dosage strength(s) as defined in the NDA approved by the FDA as of the Effective Date and any other improvements, line extensions, delivery mechanisms, dosage strengths, formulations, or forms as may be approved in the future by the FDA, Health Canada or any other relevant Regulatory Authority in the Licensee Territory that, in each case, contain a Compound.

1.74 "**Product Infringement**" has the meaning set forth in Section 8.4(a).

1.75 "**Product Launch**" means, on a country-by-country basis, the first commercial sale of the Product in a country by Licensee or its Affiliate or sublicensee after the Effective Date to an unrelated Third Party in a bona fide arms-length transaction for use, consumption, or commercial distribution in the Field in the Licensee Territory, excluding any transfer of Product for research, test marketing, clinical trial purposes, compassionate use, or named patient arrangements.

1.76 "**Product Marketing Authorization**" has the meaning set forth in Section 5.1(a).

1.77 "**Promotion**" means those activities, including advertising, Detailing, and distributing samples of a product, normally undertaken by a pharmaceutical company that are aimed at legally marketing and promoting, and encouraging the appropriate use of, a particular prescription pharmaceutical product. "**Promote**" and "**Promotional**" have correlative meanings.

1.78 "**Promotional Materials**" means all training materials and all written, printed, graphic, electronic, audio or video matter, including journal advertisements, sales visual aids, leave items, formulary binders, reprints, direct mail, direct-to-consumer ("**DTC**") advertising, Internet postings and broadcast advertisements, in each case created by Licensee or its Affiliates or on its behalf, and used or intended for use in connection with any Promotion of the Product in the Licensee Territory under this Agreement.

1.79 "**Prosecuting Party**" has the meaning set forth in Section 8.3(b).

1.80 "**PV Agreement**" has the meaning set forth in Section 5.6.

1.81 "**Qualified Assignee**" means a Person (a) operating in the pharmaceuticals industry that has the financial resources, technological and regulatory expertise, and operational capabilities reasonably required to perform all of Licensee's obligations under this Agreement, and (b) for which the Licensee (or a Financing Entity or such Person) has, at least five (5) Business Days prior to any transfer or assignment of this Agreement in accordance with the terms hereof, provided VIVUS with such information reasonably necessary to determine such Person's resources, expertise, and capabilities to perform under this Agreement.

1.82 "**Quality Agreement**" has the meaning set forth in Section 6.1.

1.83 "**Regulatory Approval**" means all approvals necessary for the manufacture, marketing, importation and sale of the Product for one or more indications in a country or regulatory jurisdiction, which may include satisfaction of all applicable regulatory and notification requirements, but which shall exclude any Pricing Approval.

1.84 "**Regulatory Authority**" means, in a particular country or regulatory jurisdiction, any applicable Governmental Authority involved in granting Regulatory Approval and/or, to the extent required in such country or regulatory jurisdiction, Pricing Approval, including FDA in the case of the Licensee Territory.

1.85 "**Regulatory Materials**" means regulatory applications, submissions, notifications, registrations, and/or other filings made to or with a Regulatory Authority that are necessary or reasonably desirable in order to Develop, use, import, sell, offer to sell, register, market, manufacture, or otherwise Commercialize the Product in the Field for the Licensee Territory, along with any documents related to Regulatory Approval and Pricing Approvals issued by a Regulatory Authority for the Licensee Territory. Regulatory Materials include, but are not limited to, INDs, NDAs, post-marketing reports submitted to a Regulatory Authority such as those described in 21 CFR 314.81, supplemental applications, and all correspondence to or from a Regulatory Authority which reference an IND or NDA.

1.86 "**Sales Force**" means Licensee's sales personnel Detailing the Product in the Licensee Territory including employees of, and contract sales organizations engaged by, Licensee who are qualified to do so pursuant to the terms and conditions of this Agreement.

1.87 "**SEC**" means the United States Securities and Exchange Commission or any successor.

1.88 "**Selling Party**" has the meaning set forth in the definition of "Net Sales" in this ARTICLE 1.

1.89 "**Sole Inventions**" has the meaning set forth in Section 8.1.

1.90 "**SOPS**" has the meaning set forth in Section 5.5(c).

1.91 "**Supply Chain Transfer**" has the meaning set forth in Section 6.2.

1.92 "**Supply Chain Transfer Plan**" has the meaning set forth in Section 6.2.

1.93 "**Taxes**" has the meaning set forth in Section 7.4.

1.94 "**Term**" has the meaning set forth in Section 12.1.

1.95 "**Territory**" means the VIVUS Territory and the Licensee Territory, respectively.

1.96 "**Third Party**" means any legal person, entity or organization other than VIVUS, Licensee or an Affiliate of either Party, including any Governmental Authority.

1.97 "**Trademark Royalty Payments**" has the meaning set forth in Exhibit C.

1.98 "**Transition Services Agreement**" means the Transition Services Agreement, dated as of September 30th, 2016, by and between VIVUS, Inc. and Auxilium Pharmaceuticals, Inc.

1.99 "**United States Bankruptcy Code**" has the meaning described in Section 12.4.

1.100 "**VIVUS Indemnitees**" has the meaning set forth in Section 10.2.

1.101 "**VIVUS Know-How**" means all Information (excluding any Patents) that (a) is Controlled as of the Effective Date or during the Term by VIVUS or its Affiliates and (b) relates to any Product in the Field or the research, development, manufacture, use or sale of the Product in the Field in the Licensee Territory.

1.102 "**VIVUS Patents**" means the patents which are set forth in Exhibit G, and any other valid U.S. and foreign patents relating thereto, including without limitation, all substitutions, reissues, renewals, reexaminations, patents of addition, extensions, registrations, confirmations, and all pending patent applications, (including provisional applications, continuations, divisionals and continuation-in-part), which are owned or controlled by VIVUS, MTPC or their respective affiliates as of the Effective Date or during the term of this Agreement. The "VIVUS Patents" shall also include but not be limited to patents directed to new uses of the compounds claimed within the VIVUS Patents in the FIELD, and patents directed to manufacturing and formulation of the compounds claimed within the VIVUS Patents in the field unless otherwise set forth herein, which are owned or controlled by VIVUS, MTPC or their respective affiliates as of the Effective Date or during the term of this Agreement.

1.103 "**VIVUS Technology**" means the VIVUS Patents and VIVUS Know-How.

1.104 "**VIVUS Territory**" means the entire world other than the Licensee Territory.

ARTICLE 2
LICENSES

2.1 **License to Licensee.** Subject to the terms and conditions of this Agreement, VIVUS hereby grants to Licensee an exclusive (even as to VIVUS), royalty-bearing (subject in all respects to Section 7.2), sublicensable (subject to ARTICLE 6) license under the VIVUS Technology, (i) to use, distribute, import, Promote, market, sell, offer for sale, and otherwise Commercialize Products in the Field in the Licensee Territory; (ii) make and have made Products in the Manufacturing Territory, where such Product is solely for use or sale in the Field in the Licensee Territory (subject to Section 2.2), and (iii) to conduct certain Development activities on the Product in the Field pursuant to ARTICLE 4 solely in support of Regulatory Approval in the Licensee Territory (collectively, the "**License**").

2.2 **Clarifications Regarding Manufacturing Rights.** The rights granted to Licensee to make and have made Product under Section 2.1 shall be subject to the following clarifications and/or limitations:

(a) As of the Effective Date and until the completion of the Supply Chain Transfer, Licensee is not being granted any right to manufacture the Compound or bulk tablets of the Product, and instead Licensee's rights to make or have made Product shall be limited to the filling, packaging, and labeling of bulk tablets of Product supplied under the Commercial Supply Agreement, along with the limited manufacturing rights granted to Licensee in the Commercial Supply Agreement (which are solely intended to address failure to supply situations).

(b) In the event of a Supply Chain Transfer pursuant to Section 6.2, Licensee's rights to make or have made Product shall be subject to any exclusive manufacturing rights granted to the Third Party manufacturers in the supply chain (which exclusive manufacturing rights shall be disclosed by VIVUS to Licensee, from time to time, until the completion of the Supply Chain Transfer pursuant to Section 6.2), in any event in accordance with and subject to the terms of the Supply Agreement.

(c) As between the Parties, VIVUS retains the sole right to make and have made Product anywhere in the world, where such Product is for use or sale solely outside the Licensee Territory, including the right to license Third Parties to do the same.

2.3 **License to VIVUS.** Subject to the terms and conditions of this Agreement, Licensee hereby grants to VIVUS a non-exclusive, royalty-free, sublicensable (subject to ARTICLE 6) license under the Licensee Technology, but solely to the extent necessary to (a) fulfill its obligations under this Agreement, including its manufacturing and supply obligations under ARTICLE 6; (b) conduct research, Development and manufacturing activities in the Licensee Territory solely in support of the Regulatory Approval of the Product in the VIVUS Territory provided that any such activities in the Licensee Territory do not have, and are not reasonably expected to have, an adverse impact on the Commercialization of the Product in the Field in the Licensee Territory; (c) use, distribute, import, promote, market, sell, offer for sale, and otherwise Commercialize Products solely in the VIVUS Territory; and (d) make and have made the Product anywhere in the world for use or sale solely in the VIVUS Territory (the "VIVUS License").

2.4 **VIVUS Retained Rights.** Notwithstanding the rights granted to Licensee under the License, VIVUS shall retain its rights under the VIVUS Technology within the Field in the Licensee Territory, but solely to the extent necessary to (a) fulfill its obligations under this Agreement, including its manufacturing and supply obligations under ARTICLE 6 and (b) conduct research, Development, and manufacturing activities in the Licensee Territory solely in support of the Regulatory Approval, Pricing Approval, or Commercialization of the Product in the VIVUS Territory (including the right to grant licenses to Affiliates or Third Parties with respect to such activities); provided that any such activities in the Licensee Territory do not have, and are not reasonably expected to have, an adverse impact on the Commercialization of the Product in the Field in the Licensee Territory. VIVUS retains all rights to the VIVUS Technology outside the Field.

2.5 **No Other Licenses.** Neither Party grants to the other Party any rights, licenses or covenants in or to any Intellectual Property, whether by implication, estoppel, or otherwise, other than the license rights that are expressly granted under this Agreement.

2.6 **Sublicense Agreements.**

(a) **Sublicensing by Licensee**. Licensee acknowledges that the License includes sublicenses under the rights licensed to VIVUS under the MTPC Agreement and that VIVUS is required to notify and consult with MTPC with respect to the selection of sublicensees. Consequently, the License may only be further sublicensed on condition that (i) Licensee shall have used Commercially Reasonable Efforts to promptly notify, consult with,provide all reasonably requested information and cooperate with VIVUS in good faith prior to any such sublicensing in connection with the ongoing obligation of VIVUS to notify and consult with MTPC in respect of the selection of sublicensees, (ii) provide VIVUS reasonable opportunity to so notify and consult with MTPC in respect of the selection of sublicensees, (iii) each sublicensee agrees, in writing, to use Commercially Reasonable Efforts to maximize the sale of Products, and (iv) each sublicensee agrees, in writing, to be bound by the same obligations as Licensee under this Agreement (including Section 2.8(a)); provided, further, however, that notwithstanding anything to the contrary herein or otherwise, Licensee may sublicense the License to [***] and TIMM Medical Technologies, Inc. at any time, subject to clauses (iii) and (iv) above. At Licensee's request, VIVUS shall use Commercially Reasonable Efforts to obtain any consents or approvals from MTPC that are required for Licensee to grant such a sublicense, it being understood that, so long as VIVUS uses such Commercially Reasonable Efforts, VIVUS shall not be responsible for any denials or delays resulting from MTPC's action or inaction. Any agreement granting a sublicense under the License shall be consistent with the terms of this Agreement and shall include confidentiality and non-use obligations no less stringent than those set forth in ARTICLE 11. Notwithstanding any sublicenses granted by Licensee hereunder, Licensee shall remain responsible for and guarantee the performance of its obligations under this Agreement.

(b) **Sublicensing by VIVUS**. The portion of the VIVUS License in Section 2.3(a) may be sublicensed by VIVUS to VIVUS' Affiliates or to any of VIVUS' subcontractors or manufacturers existing on the Effective Date or any other Third Party approved by the JSC (or VIVUS in the absence of a JSC). The portion of the VIVUS License in Sections 2.3(b), 2.3(c), or 2.3(d) may be freely sublicensed by VIVUS through multiple tiers. Any agreement granting a sublicense under the VIVUS License shall be consistent with the terms of this Agreement and shall include confidentiality and non-use obligations no less stringent than those set forth in ARTICLE 11. Notwithstanding any sublicenses granted by VIVUS hereunder, VIVUS shall remain responsible for and guarantee the performance of its obligations under this Agreement.

2.7 **Third Party Agreements.** Licensee shall be solely responsible for obtaining, at its sole expense, any agreements with Third Parties required in order to lawfully perform its Commercialization responsibilities under this Agreement, other than manufacturing and other related responsibilities that are subject to the Commercial Supply Agreement.

2.8 **Exclusivity.**

(a) Licensee hereby covenants that for a period of five (5) years from the Effective Date, neither it nor its Affiliates will, directly or indirectly (including via a license to a Third Party), develop, commercialize or in-license any Competing Product in the Licensee Territory; provided, that such covenant shall not apply to any entity that is (i) an Affiliate by virtue of its equity investment in Licensee (an "**Equity Investor**") or any Affiliate of such Equity Investor which is not otherwise an Affiliate of Licensee, and (ii) does not control the management of Licensee. For the avoidance of doubt, neither an individual non-executive member of the board of directors of Licensee, nor any entity affiliated with such individual shall, be deemed an Affiliate of Licensee for purposes of this Section 2.8(a) solely by virtue of such individual's membership on the board of directors of Licensee. VIVUS hereby covenants that for a period of five (5) years from the Effective Date, neither it nor its Affiliates will, directly or indirectly (including via a license to a Third Party), develop, commercialize, or in-license any Competing Product in the Licensee Territory.

(b) In the event that, during the Term, either Party or any of such Party's Affiliates experiences a change in control that results in a Third Party either (i) becoming an Affiliate of such Party or (ii) become such Party's successor under this Agreement (such Third Party, an "**Acquirer**"), and the Acquirer or any of such Acquirer's Affiliates, immediately prior to such acquisition, owns or has a license or other right to a Competing Product, then the Acquirer and its Affiliates (including for the avoidance of doubt, the acquired Party and its Affiliates) shall not be prohibited from developing or commercializing such Competing Product, provided that the Acquirer does not use any Confidential Information of the other Party in connection with the development or commercialization of such Competing Product.

2.9 **Covenant Not To Sue.** VIVUS hereby grants to Licensee a covenant not to sue on any VIVUS Technology on account of (i) the Development, manufacture, or Commercialization of the Product in the Field in the Licensee Territory by or on behalf of Licensee, its Affiliates or sublicensees and (ii) the manufacture of the Product in the Manufacturing Territory for purposes of the activities described in the foregoing sub-clause (i), during the Term.

2.10 **Letter Agreement.** A letter, signed by MTPC and Licensee, addressing Licensee's license rights following a termination of the MTPC Agreement is attached hereto as Exhibit E to this Agreement (the "**Letter Agreement**"). No further consent of VIVUS shall be required for Licensee to receive the benefit of the Letter Agreement, and Licensee shall have the right to deduct from any payment owed to VIVUS hereunder any payment made directly to MTPC as a consequence of the rights in the Letter Agreement being triggered.

2.11 **Notice Right.** VIVUS shall provide Licensee with prompt written notice of any breach or alleged breach, including without limitation any notice of such breach or alleged breach provided by MTPC or its successor under the MTPC Agreement, of the MTPC Agreement, or by any Third Party manufacturer under any manufacturing agreement between such Third Party manufacturer and VIVUS, and shall provide Licensee with copies of any documentation and correspondence between MPTC or such Third Party manufacturer and VIVUS regarding such breach including written summaries of any oral discussions. In the event that VIVUS is in breach of the MTPC Agreement or such manufacturing agreement, it shall promptly provide to Licensee a written plan of action to remedy or cure such breach and shall keep Licensee promptly informed of its progress or any changes to such plan of action. VIVUS may condition disclosure of attorney-client privileged information or attorney work product on the Parties' execution of a joint defense agreement, common interest agreement, or similar agreement intended to preserve attorney-client and attorney work product privileges under Applicable Law, in a form reasonably acceptable to VIVUS.

2.12 **Transition Services.** Subject to the terms and conditions of this Agreement (including Section 12.5(e)), VIVUS hereby sells, assigns, conveys, transfers and delivers to Licensee, and Licensee hereby receives, acquires and accepts from VIVUS with effect as of the Effective Date, all of VIVUS' right, title and interest in, to and under the Transition Services Agreement, and shall assume, and shall timely perform, pay and discharge in accordance with the terms of the Transition Services Agreement all of VIVUS' liabilities and obligations thereunder. Between the execution of the Transition Services Agreement and the assignment of the Transition Services Agreement to Licensee pursuant to this Section 2.12, VIVUS will not agree to any amendment, waiver of rights, or modification of the Transition Services Agreement that has, or would reasonably be expected to have, any material negative effect or material adverse impact on the Licensee, without the prior written consent of Licensee. If the assignment of the Transition Services Agreement to Licensee pursuant to this Section 2.12 occurs after the execution date thereof, VIVUS shall use Commercially Reasonable Efforts to assist and cooperate with Licensee in connection with such assignment (including providing Licensee with the benefit of all transitional services received by VIVUS from the date of execution of the Transition Services Agreement through the Effective Date).

ARTICLE 3
GOVERNANCE

3.1 **Joint Steering Committee.** Within fifteen (15) days after the Effective Date, VIVUS and Licensee shall form a Joint Steering Committee ("**JSC**") consisting of three (3) representatives from VIVUS and three (3) representatives from Licensee. Each Party may replace any of its JSC representatives at any time upon prior written notice to the other Party.

3.2 **Meetings of the JSC.** The JSC shall meet at least once every six (6) months, unless a particular meeting is waived by mutual consent. In addition, each Party shall have the right to call a meeting of the JSC on reasonable written notice to the other Party. Subject to the foregoing, the JSC shall meet on such dates and at such times as agreed by the JSC and shall meet via teleconference or videoconference or, if mutually agreed by the Parties, at a location determined by the JSC. Upon prior written notice to, and approval of, the JSC, each Party may permit visitors to attend meetings of the JSC, provided that any approved visitor shall be subject to confidentiality and non-use obligations no less stringent than the terms of ARTICLE 11. Each Party shall be responsible for its own expenses for participating in the JSC. Meetings of the JSC shall be effective only if at least (1) representative of each Party is present or participating, subject to the following sentence. The Parties acknowledge and agree that VIVUS shall have the right to opt out of its participation in the JSC, which shall only be effective if done in writing with specific reference to this subsection, at any time, in which case Licensee shall have the right to make the decisions and take the actions previously reserved to the JSC, and shall keep VIVUS reasonably informed of its plans and activities on at least a semi-annual basis.

3.3 **Responsibilities of the JSC.** The JSC shall have the responsibility and authority to:

(a) review and comment on any Development being conducted by either Party;

(b) provide a forum for discussing any development relating to the Product being conducted by VIVUS (or its sublicensees) outside the Licensee Territory;

(c) review and comment on marketing and sales activities being carried out by Licensee in the Licensee Territory, including review of the Commercialization and Medical Affairs Plans;

(d) provide a forum for discussing marketing and sales activities being conducted by VIVUS (or its sublicensees) outside the Licensee Territory;

(e) review and discuss any manufacturing or supply issues that may arise (including any issues relating to a potential Supply Disruption (as defined in the Commercial Supply Agreement), pursuant to Section 2.8 of the Commercial Supply Agreement);

(f) Establish subcommittees pursuant to Section 3.6 on an as-needed basis, oversee the activities of all subcommittees so established, and address disputes or disagreements arising in all such subcommittees; and

(g) Perform such other functions as the Parties may agree in writing.

3.4 **Areas Outside the JSC's Authority.** The JSC shall not have any authority other than that expressly set forth in Section 3.3 and, specifically, shall have no authority to (a) amend or interpret this Agreement, or (b) determine whether or not a breach of this Agreement has occurred.

3.5 **JSC Decisions.**

(a) **Consensus; Good Faith; Action Without Meeting**. The JSC shall decide all matters by consensus, with each Party having one (1) collective vote. The members of the JSC shall act in good faith to cooperate with one another and to reach agreement with respect to issues to be decided by the JSC. Action that may be taken at a meeting of the JSC also may be taken without a meeting if a written consent setting forth the action so taken is signed by one (1) duly authorized representative of each Party.

(b) **Failure to Reach Consensus**. In the event that the members of the JSC cannot come to consensus within ten (10) Business Days with respect to any matter over which the JSC has authority and responsibility as set forth in Section 3.3, the JSC shall submit the respective positions of the Parties with respect to such matter for discussion in good faith to the respective chief executive officers of VIVUS and Licensee for resolution. If such chief executive officers are not able to mutually agree upon the resolution to such matter within ten (10) Business Days after submission to them, then, subject to the limitations of Section 3.4, (a) the chief executive officer of VIVUS shall have the right to decide matters relating to a regulatory issue prior to transfer of the Product Marketing Authorization to Licensee, except that in no event can the chief executive officer of VIVUS unilaterally decide such matter in a manner that (i) creates or would reasonably be expected to create a material safety issue with respect to the Product; (ii) undermines or would reasonably be expected to undermine the validity of any Regulatory Approval in the Licensee Territory; (iii) impedes or may impede in any way the supply of Product to Licensee, or (iv) is contrary to the terms of this Agreement or any other written agreement between the Parties; and (b) to the extent such matter relates to a Development or Commercialization issue, or relates to a regulatory issue (after transfer of the Product Marketing Authorization to Licensee), the chief executive officer of Licensee shall have the right to decide such matter, except that in no event can the chief executive officer of Licensee unilaterally decide such matter in a manner that (i) creates or would reasonably be expected to create a material safety issue with respect to the Product; (ii) undermines or would reasonably be expected to undermine the validity of any Regulatory Approval in the VIVUS Territory, or (iii) is contrary to the terms of this Agreement or any other written agreement between the Parties.

3.6 **Subcommittees.** The JSC shall have the right to establish one (1) or more subcommittees and to delegate certain of its powers and responsibilities thereto. Subcommittees established by the JSC shall operate under the same rules as the JSC, except that any disputes that cannot be resolved by a subcommittee in a reasonable time period shall be submitted to the JSC for resolution in accordance with Section 3.5.

3.7 **Alliance Manager.** Each Party shall appoint one (1) employee representative who possesses a general understanding of regulatory, manufacturing, and marketing issues to act as its respective alliance manager for this relationship ("**Alliance Manager**"). The Alliance Manager shall be one of the three (3) representatives on the JSC for each Party.

ARTICLE 4
DEVELOPMENT AND COMMERCIALIZATION

4.1 **Development Obligations.**

(a) **Post-Approval Studies**. Licensee shall be responsible for conducting any post-Regulatory Approval studies of Product (i) that are required by the FDA in the Licensee Territory ("**FDA-Required Studies**") or (ii) that Licensee determines to conduct with respect to the Product in the Field in the Licensee Territory. Any and all such post-Regulatory Approval studies shall be conducted by Licensee as its sole expense. Licensee shall not be under any obligation to conduct any such additional post-Regulatory Approval studies of Product (other than the FDA-Required Studies).

(b) **Use of Data**. Each Party shall have the right, without any additional payment, to use any clinical or non-clinical data developed by or on behalf of the other Party or its Affiliates relating to the Product solely (i) to support the Regulatory Approval of Products in its territory (*i.e.*, the Licensee Territory for Licensee and the VIVUS Territory for VIVUS) and (iii) for Promotional, marketing, and medical education purposes in support of the Commercialization of the Product in its territory. The rights set forth in this section may be sublicensed by each Party to any Third Party collaborator or licensee in such Party's territory (or a portion thereof) who also holds Development or Commercialization rights to the Product in the Party's respective Territory.

(c) **Other Development**. As between the Parties, Licensee shall have the sole right to conduct any further Development work (including clinical trials) on the Product in the Field in the Licensee Territory, at its sole discretion. Licensee shall be responsible for all of its costs in connection with any further Development activities that it conducts, unless otherwise mutually agreed in writing by the Parties.

4.2 **Commercialization – General.** Subject to the terms of this Agreement, Licensee shall have sole responsibility and decision-making authority for Commercialization activities for the Licensee Territory. Licensee shall be solely responsible for all costs and expenses associated with such Commercialization activities. The Commercialization activities shall comply in all material respects with Applicable Law.

4.3 **Commercialization Plan.**

(a) Without limiting the generality of Licensee's sole responsibility and decision-making authority for Commercializing the Product in the Field in the Licensee Territory as set forth in Section 4.2, Licensee will use its Commercially Reasonable Efforts to carry out the Commercialization of the Product in accordance with a written Commercialization Plan, as such may be amended or revised by Licensee from time to time, that describes the anticipated Commercialization activities to be performed with respect to Product in the Licensee Territory by Licensee or on its behalf by permitted Third Parties (the "**Commercialization Plan**"). Each Commercialization Plan shall address, in reasonable detail, to the extent applicable, call plans for Detailing of Product, Sales Force training, Product sampling strategies and quantities, Product positioning and scientific communication strategy, and DTC and non-DTC advertising.

(b) Within thirty (30) days of the Effective Date, Licensee shall deliver to VIVUS a Commercialization Plan covering activities to be conducted in preparation of any Product Launch in the Licensee Territory on a country-by-country basis and during the first full calendar year following such Product Launch.

(c) Licensee shall thereafter update the Commercialization Plan (together with the Medical Affairs Plan described in Section 4.7) on an annual basis as follows: Licensee shall provide the JSC (or VIVUS in the absence of a JSC) with preliminary drafts of the Commercialization Plan and Medical Affairs Plan no later than November 15 of each year for the JSC's (or VIVUS' in the absence of a JSC) review and comment and Licensee shall provide the JSC (or VIVUS in the absence of a JSC) with the final Commercialization Plan and Medical Affairs Plan no later than January 31 of the year immediately following such year. In preparing the updated versions of the Commercialization Plan and Medical Affairs Plan, Licensee shall analyze the effectiveness of the elements of the prior year Commercialization Plan and Medical Affairs Plan and shall use updated sales forecasts to develop the new Commercialization Plan. Licensee agrees to give due consideration to the input provided by the JSC (or VIVUS in the absence of a JSC) but Licensee at all times will retain responsibility and decision-making authority for the Commercialization of the Product in the Field in the Licensee Territory. Licensee may, at its election, update the Commercialization Plan and Medical Affairs Plan between annual updates by following this same procedure.

(d) Each Party shall use Commercially Reasonable Efforts in performing its obligations under this Section 4.3 concerning (as applicable) the Commercialization Plan and Medical Affairs Plan.

(e) In the event of any inconsistency between, on the one hand, the Commercialization Plan or Medical Affairs Plan and, on the other hand, this Agreement, the terms of this Agreement shall prevail.

4.4 **Commercialization by Licensee.**

(a) Licensee, itself or through its Affiliates or sublicensees, shall use Commercially Reasonable Efforts to Commercialize the Product in the Field in each country of the Licensee Territory. Without limiting the generality of the foregoing, on a country-by-country basis, Licensee shall commence a Product Launch in each country (except for the United States) of the Licensee Territory no later than the date that is one hundred and eighty (180) days following Licensee's receipt of Regulatory Approval in such country.

(b) Licensee shall commence a Product Launch in the United States in accordance with the quantities set forth on Schedule 4.4(b) within sixty (60) days of the Effective Date. In the event that Licensee, due solely to reasons outside of its reasonable control, is unable to commence a Product Launch in the United States on or before such date, due to VIVUS, or any supplier or subcontractor of VIVUS, failing to ship to Licensee Product for sale reasonably in advance of such date, and MTPC thereafter terminates the MTPC Agreement without affording Licensee the right to continue to commercialize the Product under the terms of the Letter Agreement set forth in Section 2.1, then, in addition to any other rights or remedies of Licensee under this Agreement, Licensee shall have the right to terminate this Agreement and promptly receive a return of the license fee paid by Licensee under Section 7.1. If VIVUS has complied with the terms of the above and in the event Licensee fails to commence a Product Launch in the United States within sixty (60) days of the Effective Date and as a result of the failure to launch, MTPC terminates the MTPC Agreement with VIVUS, VIVUS shall, in addition to any other rights or remedies of VIVUS under this Agreement, have the right to retain the license fee paid by Licensee under Section 7.1, and VIVUS shall have no liability to Licensee as a result of such termination by MTPC.

4.5 **Sales Force.**

(a) **General**. Licensee shall at all times during the Term maintain a Sales Force containing a reasonable number of sales representatives in order to meet Licensee's obligations under Section 4.4 with respect to the Licensee Territory. The Sales Force may consist of employees of Licensee or a contract sales force (or a combination thereof); provided that Licensee shall remain responsible for the management, supervision, and performance of such contract sales force.

(b) **Qualifications**. Unless otherwise agreed by the Parties, Licensee shall subject the members of its Sales Force to substantially the same minimum qualifications that it applies to its sales forces for its other products in the Licensee Territory.

(c) **Compensation**. Licensee shall be solely responsible for all costs and expenses of recruiting, hiring, maintaining and compensating its Sales Force, including salaries, benefits and incentive compensation.

4.6 **Promotional Materials.**

(a) Licensee shall be responsible, at its expense, for preparing and producing the then current Promotional Materials. Up to two (2) times per year Licensee shall make its core Promotional Materials available to the JSC (or VIVUS in the absence of a JSC) for its review. The Promotional Materials used by Licensee or its Affiliates or sublicensees in a particular market in the Licensee Territory shall be consistent with the Regulatory Approval in the Licensee Territory and shall in any event comply in all material respects with Applicable Law. Licensee shall use and distribute the Promotional Materials in accordance with the terms of this Agreement. To the extent that VIVUS disagrees with Promotional message or tactics proposed by Licensee for Product in the Licensee Territory, it may raise such issues with the JSC (or VIVUS in the absence of a JSC) for discussion. Licensee shall be solely responsible for timely submitting, as applicable, any Promotional Materials to the FDA's Office of Prescription Drug Promotion ("**OPDP**"), or to any equivalent Regulatory Authority elsewhere in the Licensee Territory (including to any applicable state governmental authorities therein). Promptly following the Effective Date, VIVUS will take such actions necessary to confirm with OPDP that Licensee is responsible for such submissions on behalf of VIVUS.

(b) Licensee shall not use or distribute in connection with Promotion of the Product any materials bearing VIVUS' name or trademarks without VIVUS' prior written approval.

(c) All Promotional Materials used or intended for use in the United States shall include MTPC's name in a form that references MTPC as the licensor, to the extent permitted by Applicable Law and is customary for such materials in the United States. Licensee shall directly provide MTPC with copies of all such Promotional Materials used or intended for use in the United States as soon as reasonably practicable after such Promotional Materials are first used. For all other countries (except for the United States) in the Licensee Territory, Licensee shall, on a country-by-country basis, first request and obtain written confirmation from VIVUS as to whether (and how) the Promotional Materials used or intended for use in each such country shall include MTPC's name, before using any such Promotional Materials in such country.

4.7 **Medical Affairs Activities.** Without limiting the generality of Licensee's sole responsibility and decision-making authority for Commercializing the Product in the Field in the Licensee Territory as set forth in Section 4.2, Licensee will use its Commercially Reasonable Efforts to carry out medical affairs activities for the Product in accordance with a written Medical Affairs Plan, as such may be amended or revised by Licensee from time to time, that describes the anticipated medical affairs activities to be performed with respect to Product in the Licensee Territory by Licensee or on its behalf by permitted Third Parties (the "**Medical Affairs Plan**"). Each Medical Affairs Plan shall address, in reasonable detail and to the extent applicable, grants to support continuing medical education, medical information services, the support of investigator-initiated trials, and phase IV clinical trials (in each case, with respect to Product in the Field in the Licensee Territory). Within sixty (60) days of the Effective Date, Licensee shall deliver to VIVUS a Medical Affairs Plan covering those medical affairs activities anticipated to be conducted in preparation of any Product Launch in the Licensee Territory on a country-by-country basis and during the first full calendar year following such Product Launch.

4.8 **Compliance.** In performing its duties hereunder, Licensee shall, and shall use its Commercially Reasonable Efforts to cause its Sales Force to, comply with all Applicable Laws in all material respects, including all laws and regulations and other guidelines concerning the sale, promotion, and advertising of prescription drug products that are applicable to the Licensee Territory, such as the AMA's Guidelines on Gifts to Physicians, the Pharmaceutical Research and Manufacturers of America Code on Interactions with Healthcare Professionals, and the standards promulgated by the Accreditation Council for Continuing Medical Education, each as amended from time to time. Further, Licensee shall use its Commercially Reasonable Efforts to cause its Sales Force to comply with all Licensee compliance policies as in effect from time to time while selling or marketing the Product.

4.9 **Re-Sale Price.** Licensee shall have the sole discretion and authority to determine the price(s) (including discounts) at which it sells Products in the Licensee Territory, subject to Licensee's compliance with Applicable Law.

4.10 **Commercialization Reports.** Licensee shall keep the JSC (or VIVUS in the absence of a JSC) reasonably informed regarding the material progress and results of Licensee's Commercialization activities and those of its Affiliates and sublicensees, including providing the following:

(a) On a quarterly basis during the Term, Licensee shall provide VIVUS with an email report of gross sales and Net Sales of the Products in the Licensee Territory during said period and on a calendar year-to-date basis. Any such report shall be in a reasonable format, as determined by Licensee in its discretion. Each such report shall be deemed to constitute Confidential Information of Licensee for purposes of this Agreement.

4.11 **Cross-Territory Sales.** Neither Party shall Commercialize or authorize the Commercialization of any Product in the other Party's Territory. Except as authorized under Sections 2.1 and 2.2, neither Party shall, itself or through other Persons, directly solicit, advertise, sell, distribute, ship, consign, or otherwise transfer any Product outside such Party's Territory. Each Party shall use Commercially Reasonable Efforts to ensure that Products sold in its Territory are not used outside such Territory. Without limiting the generality of the foregoing, neither Party shall sell any Product to a purchaser if such Party knows, or has reason to believe, that such purchaser intends to remove such Product from such Party's Territory or otherwise intends to facilitate the use of such Product outside such Party's Territory. Each Party shall use Commercially Reasonable Efforts to ensure that its Affiliates, sublicensees, distributors, and wholesalers comply with all of the foregoing obligations.

ARTICLE 5
REGULATORY

5.1 **Transfer of Marketing Authorization.**

(a) **Transfer**. Subject to the terms and conditions of this Agreement, VIVUS hereby undertakes to transfer to Licensee NDA #202276 (the "**Product Marketing Authorization**") and all other regulatory filings previously made with any Governmental Authorities in any country within the Licensee Territory that remain pending approval as of the date hereof. VIVUS shall, as soon as practicable following VIVUS' receipt of full payment of the license fee pursuant to Section 7.1, and in any event, no later than three (3) Business Days thereafter , notify the FDA of the transfer to Licensee of the Product Marketing Authorization, and shall promptly provide a correct and complete copy of such notice of transfer to Licensee. Promptly following VIVUS' receipt of full payment of the license fee pursuant to Section 7.1, and in any event, no later than three (3) Business Days thereafter, VIVUS shall provide Licensee with a complete copy of NDA #202276 and all related correspondence with the FDA. VIVUS shall use Commercially Reasonable Efforts to complete any and all other regulatory requirements necessary for such transfer in accordance with Applicable Laws. Licensee shall assist and cooperate with VIVUS in connection with such transfer. Licensee shall be responsible for out of pocket costs and expenses incurred by either Licensee or VIVUS or their Affiliates in connection with the transfer of the Product Marketing Authorization. Such payments shall be based on written invoices submitted to Licensee by VIVUS from time to time. For clarity, only the Product Marketing Authorization will be transferred to Licensee, and no patents, patent applications, or other intellectual property of VIVUS (except for the Assigned Trademarks) shall be transferred to Licensee hereunder.

(b) **Post-Transfer Responsibilities**. Licensee shall use its Commercially Reasonable Efforts to comply with all requirements imposed on Licensee as the holder of the Product Marketing Authorization by Applicable Law and for maintaining the on-going validity of the Product Marketing Authorization. Licensee shall not take any actions, other than to the extent required by Applicable Law, that would reasonably be expected to cause the Product Marketing Authorization to be withdrawn by the FDA. Licensee shall be responsible for collecting and maintaining any safety-related information required by Applicable Law in the Licensee Territory and will coordinate with VIVUS (or at VIVUS' request, with VIVUS' licensees of the Product in the VIVUS Territory) to provide any portion of such information that is necessary or useful to support safety documentation/reporting in the VIVUS Territory.

(c) **Restriction on Further Transfer**. Licensee may not assign or transfer the Product Marketing Authorization without the prior written consent of VIVUS, except that, in connection with an assignment of this Agreement pursuant to Section 14.5 hereof, Licensee may make any such assignment or transfer without VIVUS' consent to Licensee's Affiliate or to a successor to all or substantially all of the assets or business of Licensee to which this Agreement pertains or to a Financing Entity (and such Financing Entity may make a further assignment to a Qualified Assignee, only in connection with an assignment of this Agreement pursuant to Section 14.5). Licensee acknowledges that a breach of this Section 5.1(c) by Licensee would constitute a material breach of this Agreement.

(d) **VIVUS Retained Rights**. Notwithstanding the transfer of the Product Marketing Authorization by VIVUS to Licensee as provided in Section 5.1, VIVUS shall, in all circumstances, retain the following rights after such transfer: (i) VIVUS shall exercise control over the selection of the manufacturer of the Product for sale in the Licensee Territory unless and until the Supply Chain Transfer occurs pursuant to Section 6.2; and (ii) VIVUS shall remain the owner of all data filed with Regulatory Authorities in connection with the Product Marketing Authorization and shall retain the right, with prior written notice to Licensee, to grant access to this data to Third Parties who are collaborating with or otherwise assisting VIVUS in connection with the Development or Commercialization of the Product for use in the Field outside the Licensee Territory, or manufacturing of the Product and/or the development, commercialization, or manufacturing of any other VIVUS product; and (iii) VIVUS shall, in accordance with Section 5.2(c), retain final decision-making right with respect to the content of any communications with Regulatory Authorities in the Licensee Territory in connection with the qualification of Product manufacturers unless and until a Supply Chain Transfer occurs pursuant to Section 6.2.

5.2 **Regulatory Materials and Regulatory Approvals.**

(a) **Product Marketing Authorization**. Upon transfer of the Product Marketing Authorization to Licensee in accordance with Section 5.1, (i) Licensee shall be the legal and beneficial owner of the Product Marketing Authorization and any other Regulatory Approval granted by the FDA or other Regulatory Authority in the Licensee Territory with respect to the Product, and (ii) Licensee shall be solely responsible for all communications and other dealings with the FDA and any other Regulatory Authorities in the Licensee Territory relating to the Product or the Product Marketing Authorization, subject to Section 5.1(d).

(b) **Costs**. Except as otherwise provided in this Agreement, each Party shall bear its own costs in connection with its performance of regulatory activities hereunder. Notwithstanding the foregoing, (i) VIVUS shall reimburse Licensee fifty percent (50%) of the user fee assessed by the FDA in connection with a supplemental application for updates to the Product label to reflect the results of the spermatogenesis post-marketing required study (the "**FDA Assessment**"); provided that VIVUS' payment hereunder shall not exceed $600,000, and

(ii) VIVUS shall be responsible for any other fees payable to the FDA or any other Regulatory Authority in the Licensee Territory with respect to the Product prior to the transfer of the Product Marketing Authorization to Licensee, and Licensee shall be responsible for any fees payable to the FDA or any other Regulatory Authority in the Licensee Territory with respect to the Product after the transfer of the Product Marketing Authorization to Licensee. With respect to any fees paid by VIVUS prior to the transfer of the Product Marketing Authorization to Licensee as prepayments to the FDA or any other Regulatory Authority in the Licensee Territory with respect to the Product, Licensee shall reimburse VIVUS for the pro rata portion of such fees that are allocable to the Term of this Agreement.

(c) **Notifications; Communications with Regulatory Authorities**. During the Term, each Party shall keep the other reasonably and regularly informed of such Party's submission to Regulatory Authorities of all material Regulatory Materials, meetings with Regulatory Authorities, and receipt of, or any material changes to existing, Regulatory Approvals, in each case for the Product in the Licensee Territory, pursuant to procedures to be developed by the JSC (or VIVUS in the absence of a JSC). Prior to completion of the transfer of the Product Marketing Authorization to Licensee in accordance with Section 5.1, VIVUS and Licensee shall jointly make decisions with respect to the content of any communications that VIVUS makes to Regulatory Authorities regarding the Product. Following completion of transfer of the Product Marketing Authorization to Licensee in accordance with Section 5.1, Licensee shall have the right to make any final decisions with respect to the content of any communications that it makes to Regulatory Authorities regarding the Product; provided, however, that (i) any commitments to a Regulatory Authority in the Licensee Territory that would reasonably be expected to have a material impact on the Commercialization of the Product in the VIVUS Territory shall require VIVUS' prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the first sentence of this Section 5.2(c), following completion of transfer of the Product Marketing Authorization to Licensee in accordance with Section 5.1, at VIVUS' reasonable request, Licensee shall promptly provide copies of then-current versions of any and all such Regulatory Materials and Regulatory Approvals.

5.3 **Other Regulatory Obligations.**

(a) Licensee shall comply with all pharmacovigilance obligations imposed by Applicable Law in relation to the Product. Each Party shall keep the other informed in a timely manner of any Information that such Party receives (directly or indirectly) that (i) raises any material concerns regarding the safety or efficacy of the Product; (ii) reasonably indicates or suggests a potential material liability of either Party to Third Parties in connection with the Product; (iii) is reasonably likely to lead to a recall or market withdrawal of the Product in any jurisdiction; or (iv) relates to the Product and is reasonably likely to have a material impact on a Regulatory Approval, Pricing Approval, or the Commercialization of the Product in the Field in the Licensee Territory.

(b) Each Party shall fully cooperate with and assist the other Party in complying with any regulatory obligations with respect to the Product, or the manufacturing thereof, in the Licensee Territory.

(c) Prior to the completion of the transfer of the Product Marketing Authorization to Licensee, Licensee shall not communicate with any Regulatory Authority in the Licensee Territory regarding any Product unless explicitly requested or permitted in writing to do so by VIVUS. Following the completion of transfer of the Product Marketing Authorization to Licensee, (i) Licensee's communications with Regulatory Authorities in the Licensee Territory regarding the Product shall comply with Section 5.2(c) and Section 5.3(a), and (ii) except to the extent required by Applicable Law, VIVUS shall not communicate with any Regulatory Authority in the Licensee Territory regarding any Product unless explicitly requested or permitted in writing to do so by Licensee. Except to the extent required by Applicable Law, in no event shall Licensee communicate with any Regulatory Authority in the VIVUS Territory regarding any Product unless explicitly requested or permitted in writing to do so by VIVUS.

5.4 **Rights of Reference.** VIVUS hereby grants to Licensee an exclusive right of reference to all Regulatory Materials and Regulatory Approvals owned or Controlled by VIVUS solely for the purpose of obtaining or maintaining, during the Term, the Product Marketing Authorization. Licensee hereby grants to VIVUS an exclusive right of reference to all Regulatory Materials, Regulatory Approvals (including the Product Marketing Authorization), and Pricing Approvals owned or Controlled by Licensee solely for the purpose of obtaining or maintaining Regulatory Approval for Product in the VIVUS Territory during the Term.

5.5 **Regulatory Actions.**

(a) **Notice of Non-Compliance**. Each Party shall promptly disclose to the other Party any information that it receives pertaining to notices from Regulatory Authorities of non-compliance with Applicable Laws that might reasonably be expected to have an impact on the Commercialization of the Product in the Territory, including any notices relating to the manufacture of the Product.

(b) **Inspection or Audit**. If a Regulatory Authority desires to conduct an inspection or audit of either Party's facility or a facility under contract with either Party with regard to the Product, such Party shall cooperate and cause the contract facility to cooperate with such Regulatory Authority during such inspection or audit. Each Party shall use its Commercially Reasonable Efforts to segregate, and not disclose, any Confidential Information of the other Party or other materials, correspondence and documents that are not required to be disclosed during an audit or inspection by a Regulatory Authority. To the extent that either Party receives the inspection or audit observations of such Regulatory Authority, such Party shall promptly provide the other Party with a copy of the inspection or audit observations of such Regulatory Authority. The Party holding the Product Marketing Authorization shall prepare the response to any such observations, but the submission of the response to the applicable Regulatory Authority shall be subject to the other Party's review, and the Party holding the Product Marketing Authorization shall give due consideration to such other Party's comments. Each Party shall implement at its own cost the actions to correct any material deficiencies with such Party's facility or facility under contract found by the Regulatory Authority during the audit or inspection, in accordance with the requirements of the Regulatory Authority and Applicable Law. In the case of any audit or inspection of a Party's facility or a facility under contract with such Party where such audit or inspection is not related to the Product, such Party shall promptly notify the other Party of any findings of such an audit or inspection that may have an effect on the other Party's ability to assume its obligation and responsibilities imposed by this Agreement or the Commercialization of the Product in the Licensee Territory.

(c) **Product Withdrawals and Recalls**. The Parties shall exchange their internal standard operating procedures ("**SOPs**") for conducting product recalls reasonably in advance of Product Launch, and shall discuss and resolve any conflicts between such SOPs and issues relating thereto promptly after such exchange. In the event of any disagreement as to how to resolve any such conflicts with respect to the Product, VIVUS 's SOP shall control unless and until VIVUS transfers ownership of the Product Marketing Authorization to Licensee, and Licensee's SOP shall control thereafter. If either Party becomes aware of information relating to the Product that indicates that a unit or batch of such Product may not conform to the specifications therefor, or that potential adulteration, misbranding, and/or other issues have arisen that relate to the safety or efficacy of Products, it shall promptly so notify the other Party. To the extent practicable, the Parties shall discuss the circumstances of any potential product recall, field correction, or withdrawal of any Product and possible appropriate courses of action. If Licensee decides to initiate a recall, field correction, or withdrawal of Product in the Licensee Territory, Licensee shall have the right and responsibility, at its expense but without limiting any claims Licensee may have against VIVUS or any other Person, to control such recall, field correction, or withdrawal in a manner consistent with its internal SOPs (as revised pursuant to the first sentence of this Section 5.5(c), if applicable); provided, however, Licensee shall consider in good faith the views of VIVUS as to whether a recall, field correction, or withdrawal is necessary or appropriate. For clarity, as between the Parties, VIVUS shall have the right, at its expense, to control all recalls, field corrections, and withdrawals of any Product in the VIVUS Territory. Each Party shall maintain complete and accurate records of any recall, field correction, or withdrawal in its territory for such periods as may be required by Applicable Laws, but in no event for less than five (5) years. For purposes of clarity, for Product supplied by VIVUS under the Commercial Supply Agreement, the Parties' respective responsibilities for the costs of any Product recall, field correction, or withdrawal of such Product shall be as set forth in the Commercial Supply Agreement.

5.6 **PV Agreement.** Within thirty (30) days of the Effective Date, the Parties shall use commercially reasonable efforts to enter into a separate pharmacovigilance agreement (the "**PV Agreement**"), containing the specific terms, conditions and obligations of the Parties with respect to the collection, reporting and monitoring of all adverse drug reactions, adverse events, medical inquires with safety concerns, and other relevant drug safety matters with respect to Products during the Term. From the Effective Date until the date that the Parties have entered into the PV Agreement, but in no event for any period longer than thirty (30) days following the Effective Date, VIVUS shall handle medical inquiries, complaints and adverse experience reporting for the Product in the United States in accordance with VIVUS' customary practice for handing such activities and using VIVUS' existing resources (including call centers).

ARTICLE 6
MANUFACTURING

6.1 **Commercial Supply Agreement.** Concurrent with the execution of this Agreement, the Parties have executed (a) the manufacturing and supply agreement (the "**Commercial Supply Agreement**") attached hereto as Exhibit B, under which VIVUS has agreed to supply, itself or through one (1) or more Third Party manufacturers, bulk tablets of Product to Licensee, its Affiliates, and/or its sublicensees for Commercialization in the Field in the Licensee Territory, and (b) the quality agreement (the "**Quality Agreement**"), attached hereto as Exhibit F, which governs the agreed-upon specifications and other technical aspects of supply of such Product for Commercialization in the Field in the Licensee Territory. For the avoidance of doubt, none of VIVUS' agreements with Third Party manufacturers and suppliers for the Product shall be assigned to Licensee on the Effective Date.

6.2 **Transition of Supply Chain.** At a time selected by Licensee, but in any event no later than one hundred and eighty (180) days following the Effective Date, Licensee may elect to have VIVUS transfer control of the supply chain for the Product to Licensee or its designee for the supply of Product for the Licensee Territory by assigning to Licensee VIVUS' agreement(s) with the contract manufacturer(s) in such supply chain (the "**Supply Chain Transfer**"). As promptly as practicable following written notice from Licensee that it will exercise its right to a Supply Chain Transfer, the Parties shall discuss and agree on a written plan for the Supply Chain Transfer (the "**Supply Chain Transfer Plan**"). Following agreement on such Supply Chain Transfer Plan, the Parties shall each use Commercially Reasonable Efforts to carry out their respective obligations thereunder in a timely fashion; provided, however, the Supply Chain Transfer shall only occur if and when Licensee makes the applicable election. Notwithstanding the foregoing, Licensee acknowledges that in order for VIVUS to carry out its obligations under the Supply Chain Transfer Plan, VIVUS will need to obtain certain third party consents that are outside of the control of VIVUS. Following the Supply Chain Transfer, Licensee shall pay the Third Party manufacturer of Product directly for such supply. Notwithstanding anything to the contrary herein or otherwise, VIVUS hereby acknowledges and agrees that it shall not agree or consent to any amendment, waiver of rights, or modification of any agreements that pertain to the current supply chain for the Product, including without limitation the Manufacturing and Supply Agreement, (a) that would reasonably be expected to result in (i) any non-routine increase in the Price (as defined in the Commercial Supply Agreement), (ii) any early termination of the Commercial Supply Agreement, or (iii) any increase in the Licensee's Minimum Purchase Obligations (as defined in the Commercial Supply Agreement), (b) that has, or would reasonably be expected to have, any other material negative effect or material adverse impact on the rights granted to Licensee hereunder or under the Commercial Supply Agreement or (c) that would impose additional material obligations on Licensee hereunder or under the Commercial Supply Agreement, in each case without the prior written consent of Licensee (which consent shall not to be unreasonably withheld, conditioned or delayed).

ARTICLE 7
FINANCIALS

7.1 **License Fee.** No later than 5:00 p.m. (Eastern Daylight Time) on September 30th, 2016, Licensee shall pay to VIVUS a one-time, non-refundable (subject to Section 4.4(b)), non-creditable license fee of seventy million dollars ($70,000,000) by wire transfer of immediately available funds into an account designated in writing by VIVUS.

7.2 **Royalties under MTPC Agreement.** Licensee shall be responsible for paying the amounts and payments set forth on Exhibit C owed by VIVUS to MTPC under the MTPC Agreement on account of Net Sales of Licensee or its Affiliates or sublicensees, including the royalties on net sales owed to MTPC during the MTPC Royalty Period, trademark royalties owed to MTPC after the end of the MTPC Royalty Period, and Licensee's pro-rata share of the sales milestone, all of which are set forth in Exhibit C (the "**MTPC Payments**"). For the avoidance of doubt, the Parties acknowledge that (i) such payments to VIVUS are intended to match payments owed by VIVUS to MTPC under the MTPC Agreement, (ii) that to the extent royalties owed to MTPC are terminated or reduced (temporarily or permanently) for any reason, any royalties owed by Licensee to VIVUS hereunder shall be terminated or reduced (temporarily or permanently, as applicable) in an equivalent manner (and for an equivalent duration, as applicable) in all respects, (iii) except as expressly provided herein, such royalties shall not be subject to any step-down, and (iv) that the definition of "net sales" under the MTPC Agreement is different than the definition of Net Sales hereunder, and that, as a result, Licensee's payment obligations under this Section 7.2 and Exhibit C that are based on net sales shall be determined using the definition of MTPC Agreement Net Sales contained in the MTPC Agreement.

7.3 **Royalty Payments and Reports.** Within forty-five (45) days after the end of each calendar quarter, Licensee shall provide VIVUS with a statement of (a) the amount of gross sales of Products during the applicable calendar quarter, (b) an itemized calculation of Net Sales showing Net Sales Deductions during such calendar quarter, and (c) the calculation of the amount of any payment due pursuant to Section 7.2. Together with each quarterly statement provided pursuant to this Section 7.3, Licensee shall provide VIVUS with any payments due. All amounts payable to VIVUS under this Section 7.3 shall be paid by wire transfer of immediately available funds into an account designated in writing by VIVUS. Promptly, but no later than ten (10) Business Days, after VIVUS' receipt of any such payments, VIVUS shall remit such payments by wire transfer to MTPC in accordance with the terms of the MTPC Agreement, and provide Licensee with confirmation of such wire transfer.

7.4 **Taxes.** All payments made under this Agreement shall be made free and clear of withholding for Taxes ("**Withholding Taxes**") unless such withholding is otherwise required under Applicable Law. To the extent such withholding is required under Applicable Law, Licensee shall pay such Taxes to the applicable taxing authority and shall be permitted to deduct such Taxes from applicable payments under this Agreement. Licensee will timely provide VIVUS with reasonable documentation evidencing the payment of any such Taxes to the applicable taxing authority and shall comply with any tax reporting obligations that are required under Applicable Law so as to enable VIVUS to obtain a credit of any such Tax. Notwithstanding the foregoing, to the extent that a deduction or withholding of Taxes hereunder arises as a result of any action taken by Licensee after the Effective Date that has at the time of such action the effect of modifying the Tax treatment of, or increasing the Taxes applicable to, payments hereunder, in each case relative to the Tax treatment existing as of the Effective Date (a "**Licensee Withholding Tax Action**"), including without limitation an assignment of this Agreement by Licensee or any failure on the part of Licensee to comply with Applicable Law, then, and only to the extent VIVUS is not eligible to obtain a credit of any such withholding taxes, (a) the payment by Licensee shall be increased by the amount necessary (the "**Additional Tax**") to ensure that VIVUS receives an amount equal to the amount that it would have received had no such Licensee Withholding Tax Action occurred, and (b) obligations set forth above with respect to making payments to the applicable taxing authority and reporting such payments to VIVUS shall apply with respect to such Additional Tax; provided that, to the extent any Additional Tax is attributable in whole or in part to any action taken by VIVUS after the Effective Date, the payment increase in subsection (a) shall be proportionately reduced to reflect the relative responsibilities of the Parties for causing the deduction or withholding of Taxes. Solely for purposes of this Section 7.4, "**Taxes**" means any present or future taxes, levies, imposts, duties, charges, assessments or fees of any nature (including interest, penalties and additions thereto) that are imposed by the applicable government or other taxing authority.

7.5 **Late Payments.** In the event any payment due hereunder is not made when due, the payment shall accrue interest (beginning on the date such payment is due) calculated at the rate of one percent (1%) per month or the maximum rate allowable by Applicable Law, whichever is less. Such payment when made shall be accompanied by all interest so accrued.

7.6 **Records; Audits.** Licensee shall maintain complete and accurate books and records in accordance with GAAP in sufficient detail to permit VIVUS to confirm the accuracy of milestone payments, royalty payments, and any other compensation payable under this Agreement, for a period of five (5) years from the creation of individual records or any longer period required by Applicable Law. At VIVUS' request, such records shall be available for review at Licensee's headquarters located at 11 Commerce Drive, 1st Floor, Cranford, New Jersey 07016, or a mutually agreeable location determined by Parties not more than once each calendar year covering the two (2) immediately preceding calendar years (during normal business hours on a mutually agreed date with reasonable advance notice) by an independent Third Party auditor selected by VIVUS and approved by Licensee (such approval not to be unreasonably withheld, conditioned, or delayed) and subject to confidentiality and non-use obligations no less stringent than those set forth in ARTICLE 11 for the sole purpose of verifying for VIVUS the accuracy of the financial reports furnished by Licensee pursuant to this Agreement or of any payments made by Licensee to VIVUS pursuant to this Agreement. Any such auditor shall not disclose Licensee's Confidential Information to VIVUS, except to the extent such disclosure is necessary to verify the accuracy of the financial reports furnished by Licensee or the amount of payments due by Licensee under this Agreement. Any undisputed amounts finally determined to be owed but unpaid shall be paid within thirty (30) days from the accountant's report, plus interest (as set forth in Section 7.5) from the original due date. Any amounts finally determined to have been overpaid may be credited by Licensee against future payments to VIVUS hereunder. Licensee may carry forward any unused credits to future calendar quarters; provided, that in the event there are unused credit amounts upon the termination of this Agreement or expiration of the MTPC Royalty Period, VIVUS shall promptly pay to Licensee such amounts. VIVUS shall bear the full cost of such audit unless such audit reveals an underpayment or under-reporting error of ten percent (10%) or more during the applicable audit period, in which case Licensee shall bear the full cost of such audit.

7.7 **Currency.** All amounts specified or payable in this Agreement shall be in United States dollars.

ARTICLE 8
INTELLECTUAL PROPERTY

8.1 **Ownership of Inventions.** Each Party shall own all inventions and Information made solely by its respective employees, agents, and independent contractors and its Affiliates in the course of conducting such Party's activities under this Agreement (collectively, "**Sole Inventions**"), along with any Patents covering such Sole Inventions. All inventions and Information that are made jointly by employees, Affiliates, agents, or independent contractors of both Parties in the course of performing activities under this Agreement (collectively, "**Joint Inventions**"), along with any Joint Patents, shall be owned jointly by the Parties. Subject to the licenses granted pursuant to Section 2.1 or 2.3, each Party shall have the right to practice, license and exploit the Joint Inventions and Joint Patents worldwide, without consent of the other Party (and where consent is required by Applicable Law, such consent is hereby deemed granted) and without a duty of accounting to the other Party. For the avoidance of doubt and for purposes of this Agreement, to the extent that any Joint Inventions relate to any Product, such Joint Inventions shall be deemed to constitute VIVUS Know-How and Licensee Know-How, and to the extent that any Joint Patents relate to any Product, such Joint Patents shall be deemed to constitute VIVUS Patents and Licensee Patents.

8.2 **Disclosure of Inventions.** Each Party shall promptly disclose to the other all Sole Inventions or Joint Inventions relating to any Product or its composition, formulation, manufacture, or use, including all invention disclosures or other similar documents submitted to such Party by its, or its Affiliates', employees, agents or independent contractors describing such Sole Inventions or Joint Inventions. Such Party shall also respond promptly to reasonable requests from the other Party for more Information relating to such inventions.

8.3 **Prosecution of Patents.**

(a) **VIVUS Patents**. Licensee acknowledges that, under the terms of the MTPC Agreement, MTPC has the sole right to prosecute and maintain the VIVUS Patents.

(b) **Joint Patents**. With respect to any potentially patentable Joint Invention, the Parties shall meet and agree upon which Party, if any, shall prepare, file, prosecute (including any interferences, reissue proceedings and reexaminations) and maintain patent applications covering such Joint Invention (any such patent application and any patents issuing therefrom a "**Joint Patent**") in any jurisdictions throughout the world, as well as the manner in which patent expense for such Joint Patent will be shared by the Parties. The Party that prosecutes a patent application in the Joint Patents (the "**Prosecuting Party**") shall provide the other Party reasonable opportunity to review and comment on such prosecution efforts regarding the applicable Joint Patents in the particular jurisdictions, and such other Party shall provide the Prosecuting Party reasonable assistance in such efforts. The Prosecuting Party shall provide the other Party with a copy of all material communications from any patent authority in the applicable jurisdictions regarding the Joint Patent being prosecuted by such Party, and shall provide drafts of any material filings or responses to be made to such patent authorities a reasonable amount of time in advance of submitting such filings or responses. In particular, each Party agrees to provide the other Party with all information necessary or desirable to enable the other Party to comply with the duty of candor/duty of disclosure requirements of any patent authority. Either Party may determine that it is no longer interested in supporting the continued prosecution or maintenance of a particular Joint Patent in a country or jurisdiction, in which case the disclaiming Party shall provide the other Party with written notice of such determination at least thirty (30) days before any deadline for taking action to avoid abandonment and shall provide the other Party with the opportunity to have the disclaiming Party's interest in such Joint Patent in such country or jurisdiction assigned to the other Party, at no cost to the other Party.

(c) **Cooperation in Prosecution**. Each Party shall provide the other Party all reasonable assistance and cooperation in the Patent prosecution efforts provided above in this Section 8.3, including providing any necessary powers of attorney and executing any other required documents or instruments for such prosecution.

8.4 **Enforcement of Patents.**

(a) **Notification**. If a Party becomes aware of any infringement, threatened infringement, or alleged infringement of the VIVUS Patents or Joint Patents on account of a Third Party's manufacture, use or sale of a product that includes the Compound as the sole active ingredient in the Field in the Licensee Territory (in each case, a "**Product Infringement**"), then such Party shall promptly notify the other Party in writing of such Product Infringement, including any evidence in such Party's possession demonstrating such Product Infringement. Any "patent certification" filed in the United States under 21 U.S.C. §355(b)(2) or 21 U.S.C. §355(j)(2) (or similar provisions in other jurisdictions) that asserts that infringement of a VIVUS Patent or Joint Patent will not arise from the manufacture, use or sale of a product that includes the Compound as the sole active ingredient in the Field in the Licensee Territory by a Third Party or that asserts that any claims of a VIVUS Patent or Joint Patent covering product that includes the Compound as the sole active ingredient in the Field in the Licensee Territory is invalid or unenforceable shall be deemed to be a Product Infringement hereunder, and each Party shall provide written notice to other Party of any such filed certification within five (5) Business Days of becoming aware thereof. Notwithstanding the foregoing, VIVUS shall bear all fees, costs and expenses associated in any manner with the Hetero Litigation and VIVUS shall not consent to any settlement with respect to the Hetero Litigation without the prior written consent of Licensee (which consent shall not be unreasonably withheld, conditioned or delayed), provided that (i) Licensee's consent shall not be required for any settlement with respect to the Hetero Litigation that (A) does not include any admission of the invalidity of, or waiver or forfeiture of any claims of, the VIVUS Patents and (B) includes any entry date for a Generic Product that is on or after the date that is six (6) months prior to the expiration date of U.S. Patent No. 6,656,935, and (ii) if (A) VIVUS, in good faith, recommends a settlement proposal to Licensee, in writing, that (x) does not include any admission of the invalidity of, or waiver or forfeiture of any claims of, the VIVUS Patents and (y) includes any entry date for a Generic Product that is earlier than the date that is six (6) months prior to the expiration date of U.S. Patent No. 6,656,935, but no earlier than the date that is one (1) year prior to the expiration date of U.S. Patent No. 6,656,935, and (B) Licensee does not deliver to VIVUS a written consent to such settlement proposal within five (5) Business Days of Licensee's receipt of VIVUS' recommendation, then Licensee will immediately assume full responsibility for the Hetero Litigation (including any and all costs and expenses related to, arising from, or otherwise associated therewith) from the date of such written recommendation from VIVUS, and VIVUS will reasonably cooperate with Licensee, at Licensee's sole cost and expense, to facilitate any transition of the Hetero Litigation from VIVUS to Licensee.

(b) **Enforcement**. During the Term and subject to the remainder of this Section 8.4(b), Licensee shall have the first right to initiate, prosecute and control legal proceedings against any person or entity engaged in a Product Infringement of the VIVUS Patents in the Licensee Territory, all at Licensee's sole expense. If Licensee decides not to bring such legal action, or if Licensee fails to initiate such legal action by the Action Date, VIVUS (and/or MTPC) shall have the right, but not the obligation, to commence a suit or take action to enforce the applicable VIVUS Patents with respect to such Product Infringement in the Licensee Territory, at its own expense.

(c) **Cooperation**. Each Party shall provide to the Party enforcing any rights under Section 8.4(b) reasonable assistance in such enforcement, including joining such action as a party plaintiff if required by Applicable Law to pursue such action. Additionally, to the extent requested by Licensee, VIVUS agrees to exercise its right under the MTPC Agreement to require MTPC to cooperate in any enforcement by or on behalf of Licensee pursuant to Section 8.4(b), including being joined as a party to such action if necessary. The enforcing Party shall keep the other Party reasonably and regularly informed of the status and progress of such enforcement efforts, and shall reasonably consider the other Party's comments on any such efforts. The non- enforcing Party shall have the right to be represented in any action brought under Section 8.4(b) by counsel of its choice and at its own expense. For clarity, as between the Parties, VIVUS (or MTPC or a VIVUS designee) shall have the exclusive right to bring and control any legal action in connection with any actual, alleged, or threatened infringement of a VIVUS Patent that is not a Product Infringement at its own expense as it reasonably determines appropriate.

(d) **Settlement**. Without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned or delayed, neither Party shall settle any claim, suit or action brought under Section 8.4 involving VIVUS Patents in any manner that (i) admits the invalidity of, or otherwise impairs the other Party's rights in, the VIVUS Patents or (ii) limits, or would reasonably be expected to limit, the ability of the other Party or its licensees to sell or manufacture Products in its territory (*i.e.*, the Licensee Territory in the case of Licensee or the VIVUS Territory in the case of VIVUS). Notwithstanding the foregoing, in the event that (A) Licensee decides not to bring a legal action against Product Infringement in the Licensee Territory, or if Licensee fails to initiate such legal action by the Action Date, and (B) thereafter MTPC (or a licensee or designee of MTPC other than VIVUS) brings an action under the VIVUS Patents in the Licensee Territory or the VIVUS Territory, settlement of such action shall be at MTPC's sole discretion and shall not require the consent of Licensee.

(e) **Recoveries**. Any recoveries resulting from an action brought by a Party under Section 8.4(b) relating to a claim of Product Infringement of a VIVUS Patent shall be first applied against payment of each Party's costs and expenses in connection therewith. Any such recoveries in excess of such costs and expenses (the "**Remainder**") will be retained by the enforcing Party; provided that if Licensee is the enforcing Party, the Remainder shall be included in Net Sales for purposes of calculating royalties owed to VIVUS hereunder.

(f) **Joint Patents**. If a Third Party infringes any Joint Patent, the Parties shall discuss such infringement and the Parties shall each have the right, but neither Party shall be obligated, to bring an appropriate suit or other action under such Joint Patent against any Person engaged in such infringement. If both Parties agree to so enforce such Joint Patents, they shall be jointly responsible for, and share equally, all the costs and expenses of any suit brought by them and shall equally share all recoveries with respect thereto. If one Party elects not to enforce such Joint Patents against such infringement, then the other Party shall have the right, but not the obligation, to take action to enforce such Joint Patents against such infringement at its own cost and expense and such other Party may retain all recoveries with respect thereto.

8.5 **Patent Marking.** Licensee shall, and shall require its Affiliates and sublicensees, to mark Products sold by it hereunder with appropriate patent numbers or indicia to the extent permitted by Applicable Law.

8.6 **Trademarks**. Subject to the terms and conditions of this Agreement, including Section 12.5(c), VIVUS hereby sells, assigns, conveys, transfers and delivers to Licensee, and Licensee hereby receives and accepts from VIVUS, with effect as of the Effective Date, all of its right, title and interest in and to the Assigned Trademarks, any and all goodwill associated therewith, and all rights in and to any of the foregoing. Licensee shall be responsible for the selection, adoption, registration, maintenance and defense of the (a) Assigned Trademarks and

(b) any other trademarks Licensee uses in connection with the sale or marketing of Products in the Licensee Territory (such other trademarks, collectively, the "**Licensee Trademarks**"), as well as all expenses associated therewith. Notwithstanding the foregoing, if Licensee determines that it is no longer interested in maintaining (or defending against any cancellation proceedings) a particular Assigned Trademark, Licensee shall provide VIVUS with written notice of such determination at least sixty (60) days before any deadline for taking action to avoid any cancellation of, abandonment of, or other loss of rights relating to such Assigned Trademark, and at VIVUS' request, shall promptly transfer and assign such Assigned Trademark, any goodwill associated therewith, and all rights in and to any of the foregoing, to VIVUS, at no cost to VIVUS. Licensee shall own all Licensee Trademarks.

8.7 **Regulatory Data Protection.** As between the Parties, Licensee shall be solely responsible for deciding which of the VIVUS Patents to submit to FDA for listing in the Orange Book for any Product and for maintaining with FDA correct and complete listings of applicable patents for such Product; provided that Licensee shall not unreasonably fail to include any VIVUS Patents requested by VIVUS to be submitted to FDA for listing in the Orange Book.

8.8 **Infringement of Third Party IP.** Each Party shall promptly notify the other Party in writing of any allegation, claim or suit that the manufacture, use or sale of any Product infringes or misappropriates a Third Party's Patent or other Intellectual Property. Subject to ARTICLE 10, each Party shall have the sole right to control any defense of any such claim involving alleged infringement of Third Party rights by such Party's activities, at its own expense and by counsel of its own choice.

ARTICLE 9
REPRESENTATIONS, WARRANTIES AND COVENANTS

9.1 **Mutual Representations and Warranties.** Each Party hereby represents, warrants, and covenants (as applicable) to the other Party as follows, as of the Effective Date:

(a) **Corporate Existence and Power**. It is a corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated or formed, and has all requisite power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement, including the right to grant the licenses granted by it hereunder.

(b) **Authority and Binding Agreement**. It has the requisite power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; it has taken all necessary action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and this Agreement has been duly executed and delivered on its behalf, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

(c) **Consents**. All necessary consents, approvals and authorizations of all governmental authorities and other Third Parties required to be obtained by it in connection with the execution, delivery and performance of this Agreement have been obtained by it.

(d) **No Conflict**. The execution and delivery of this Agreement, the performance of such Party's obligations hereunder and the licenses and sublicenses to be granted pursuant to this Agreement (i) do not and will not conflict with or violate any requirement of Applicable Law existing as of the Effective Date, (ii) do not and will not conflict with or violate the certificate of incorporation, certificate of formation, by-laws, limited partnership agreement or other organizational documents of such Party, and (iii) do not and will not conflict with, violate, breach, constitute a default or give rise to any right of termination under any contractual obligations of such Party or any of its Affiliates existing as of the Effective Date.

9.2 **VIVUS Representations, Warranties and Covenants.** VIVUS hereby represents, warrants, and covenants to Licensee as of the Effective Date that, except as disclosed in Schedule 9.2:

(a) VIVUS is the exclusive licensee of the VIVUS Patents in the Field in the Licensee Territory;

(b) except for the Auxilium Agreement, VIVUS has granted no rights to a Third Party under the VIVUS Technology with respect to the Commercialization of Product in the Field in the Licensee Territory, and as of the Effective Date, no Third Party has any right or license to clinically develop Product in the Field in the Territory at any time during the Term;

(c) to the Knowledge of VIVUS as of the Effective Date, the manufacture, Development, and Commercialization of the Product in the Field in the Licensee Territory does not infringe any issued Third Party patents or any claims of any pending patent applications in the Licensee Territory that are reasonably likely to issue as filed. To the Knowledge of VIVUS, no Third Party is infringing any VIVUS Patents. VIVUS has not received any written notice from any Third Party asserting that the VIVUS Patents are invalid, unenforceable, or not infringed. VIVUS has not, and, to the Knowledge of VIVUS, MTPC has not, alleged that any Third Party infringes or has infringed the VIVUS Patents or misappropriated or used without authorization the VIVUS Know-How;

(d) there are no material liens, encumbrances, charges, security interests, mortgages or other similar restrictions currently existing on or to the VIVUS Technology and VIVUS has not granted any outstanding liens, encumbrances, charges, security interests, mortgages or other similar restrictions on the VIVUS Technology in the Territory;

(e) to the Knowledge of VIVUS, all of the clinical trials of the Product conducted prior to, or being conducted as of, the Effective Date were conducted, or are being conducted, in accordance with Applicable Laws, and in the case of clinical trials, the then valid cGCP. "cGCP" shall mean the current standards for Clinical Trials for drugs, as set forth in the FDC Act and applicable FDA regulations (including without limitation 21 C.F.R. Parts 50, 54 and 56) and guidances promulgated thereunder, as amended from time to time;

(f) VIVUS has disclosed, shown or made available (*e.g.*, through the electronic data room) to Licensee all material information and data (including without limitation all communications with or from the FDA or any other Regulatory Authority) relating to the results of all preclinical studies and clinical trials of the Product;

(g) VIVUS has provided to, or made available for review by, Licensee all reports and data collections containing information about adverse safety issues (including adverse drug experiences) related to the Product of which VIVUS has Knowledge;

(h) VIVUS has not received any written notice from any Third Party asserting or alleging that the research, Development, making or using of the Product by VIVUS prior to the Effective Date has infringed or otherwise violated, or that the Commercialization of the Product in the Field in the Licensee Territory will infringe or otherwise violate, the intellectual property rights of such Third Party.

(i) VIVUS has obtained the Product Marketing Authorization. True and complete copies of such Product Marketing Authorization and all correspondence with the FDA and any other Regulatory Authority relating to the Product Marketing Authorization have been provided to Licensee. As of the Effective Date, the Product Marketing Authorization remains valid, and VIVUS has not received any notices from the FDA or any other Regulatory Authority regarding any possible modifications or withdrawals;

(j) the MTPC Agreement is valid, binding and in full force and effect and is enforceable by VIVUS in accordance with its terms. Except as would not reasonably be expected to result in the termination, or material limitation, restriction or adverse change, in the rights granted to Licensee by the terms of this Agreement, (i) VIVUS has performed all obligations required to be performed by it to date under the MTPC Agreement and is not in breach of or in default under the MTPC Agreement, and no event has occurred which with the passage of time or giving of notice or both would constitute such a breach or default, (ii) there is no existing breach or default by MTPC and (iii) no event has occurred which with the passage of time or giving notice of or both would constitute such a breach or default by MTPC. VIVUS has not received any written notice of breach under the MTPC Agreement, whether or not cured or disputed. MTPC has not exercised its rights under Section 2.4 of the MTPC Agreement. To the Knowledge of VIVUS, VIVUS' rights under the VIVUS Technology with respect to the Development, manufacture or Commercialization of the Product in the Field for the Licensee Territory are exclusive as to MTPC. VIVUS has provided to Licensee a complete and accurate copy of the MTPC Agreement as of the Effective Date;

(k) with respect to the Product covered by the Product Marketing Authorization, VIVUS has paid in full the milestones due to date under the MTPC Agreement;

(l) VIVUS will not at any time during the Term take any action that it knows or should know, will result in a breach of the MTPC Agreement and will throughout the Term comply with the terms and provisions of the MTPC Agreement in all material respects. VIVUS will not at any time during the Term terminate the MTPC Agreement without the prior written consent of Licensee. VIVUS will not agree to any amendment, waiver of rights, or modification of the MTPC Agreement that (i) would reasonably be expected to result in (A) any non-routine increase in the Price (as defined in the Commercial Supply Agreement), (B) any early termination of the Commercial Supply Agreement, or (C) any increase in the Licensee's Minimum Purchase Obligations (as defined in the Commercial Supply Agreement), (ii) has, or would reasonably be expected to have, any other material negative effect or other material adverse impact on (A) any financial or reporting obligation of Licensee or (B) on the rights granted to Licensee under this Agreement or the material obligations imposed on Licensee under this Agreement, without the prior written consent of Licensee;

(m) VIVUS has not knowingly failed to furnish Licensee with any information requested by Licensee, or intentionally concealed from Licensee any information in VIVUS' possession which would be reasonably likely to be material to Licensee's decision to enter into this Agreement and undertake the commitments and obligations set forth herein;

(n) as of the Effective Date, VIVUS represents and warrants that (i) there is no actual, pending, alleged or, to the Knowledge of VIVUS, threatened product liability action with respect to any Product anywhere in the United States or the European Union; (ii) to the Knowledge of VIVUS, there is no actual, pending, alleged or threatened product liability action with respect to any Product anywhere else the world; and (iii) to the Knowledge of VIVUS, there are no facts or circumstances that would cause VIVUS to believe that there is a basis for such a product liability claim;

(o) to the Knowledge of VIVUS, VIVUS, its Affiliates, its sublicensees, and their respective authorized distributors and agents, in each case in respect of the Product, have shipped and sold at all times during the nine (9) month period prior to the Effective Date, the Product in the ordinary course of business and consistent with past Product shipment and sales practices and, in particular, have not, directly or indirectly: (a) engaged in "channel stuffing" or "load" selling of Product, (b) encouraged or required customers to "buy in" Product, (c) encouraged customers to make payments earlier than would otherwise reasonably be expected (based on historical patterns) to be made, or otherwise (d) engaged in the process of positioning inventory of the Product with distributors, wholesalers, retailers or customers materially in excess of requirements or initiated or engaged in any program, activity or other action (including any rebate, discount, chargeback or refund policy or practice) that could reasonably be expected to result, directly or indirectly, in sales or profits materially in excess of purchasing patterns that have been normal for the Product;

(p) to the Knowledge of VIVUS, Auxilium has not taken any action or failed to take any action which would constitute a material breach or default under Section 4.8, Section 5.3(a), and Section 5.3(b) of the Auxilium Agreement;

(q) as of the Effective Date, all product fees, establishment fees and other fees for amounts greater than $10,000 invoiced by any Governmental Authority in the Licensee Territory with respect to the Product and the Product Marketing Authorizations have been paid; and

(r) as of the Effective Date, VIVUS has not elected to assume responsibility over any existing patient assistance programs pursuant to Section 4.2 of the Transition Services Agreement.

9.3 **Assigned Trademark Representations and Warranties.** VIVUS hereby represents and warrants to Licensee as of the Effective Date that:

(a) to the Knowledge of VIVUS, there is no Third Party using or infringing any of the Assigned Trademarks in the Licensee Territory in derogation of the rights granted to Licensee in this Agreement;

(b) except as disclosed in Schedule 9.3, attached hereto, VIVUS has not received notice of any opposition or cancellation action or litigation pending or any communication which expressly threatens an opposition or cancellation action, or other litigation, before any trademark office, court or any other governmental entity in the Licensee Territory with respect to any of the Assigned Trademarks;

(c) the Assigned Trademarks are the only trademarks that, prior to the consummation of the transactions contemplated herein, were owned, held, Controlled, licensed or otherwise used (or intended to be used) by VIVUS or its Affiliates with respect to the Product in the Field in the Licensee Territory (other than VIVUS' corporate name and/or logo);

(d) to the Knowledge of VIVUS, prior to the consummation of the transactions contemplated herein, it had all rights necessary to use the Assigned Trademarks with respect to the Product in the Licensee Territory and to assign and transfer to Licensee the Assigned Trademarks as set forth above; and

(e) to the Knowledge of VIVUS, it has not infringed, misappropriated, diluted or otherwise violated any trademark of any Third Parties by registering or using the Assigned Trademarks in the Licensee Territory.

9.4 **Licensee Representations, Warranties and Covenants.**

(a) Licensee hereby represents and warrants to VIVUS as of the Effective Date that, except as disclosed by VIVUS in Schedules 9.2 and 9.3, to the actual knowledge of Greg Ford, Keith Lavan and Keith Rotenberg, there are no misrepresentations or breaches of any of VIVUS' representations or warranties under this Agreement.

(b) Licensee hereby covenants not to sue the VIVUS Indemnitees (as defined in Section 10.2 hereof), and shall defend, indemnify and hold harmless the VIVUS Indemnitees from and against any and all Losses incurred by the VIVUS Indemnitees, for any such VIVUS Indemnitees' compliance with any Financing Entity's notice of its exercise of rights and remedies under the Financing Documents in connection with any Financing Default (including during the pendency of any dispute between Licensee and the Financing Entity relating to or arising under the Financing Documents, provided that the Financing Entity provides written notice to VIVUS of such exercise of such rights and remedies).

9.5 **Compliance with Law.** Each Party shall, and shall use Commercially Reasonably Efforts to ensure that its Affiliates and sublicensees shall, comply in all material respects with all Applicable Laws in exercising their rights and fulfilling their obligations under this Agreement. If the exercise by Licensee of any of its rights under the Agreement requires the making of filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, then each Party agrees to diligently make any such filings and respond to any request for information to expedite review of such transaction.

9.6 **Representations Regarding Debarment and Compliance.**

(a) Each Party represents, warrants and covenants that as of the Effective Date and during the Term, neither it nor any of its Affiliates nor any of their respective directors, officers, employees, or consultants, and, to its Knowledge based upon reasonable inquiry, any Third Party (and its directors, officers, employees and consultants), in each case who were responsible for the development or whose responsibilities involve the Development or Commercialization of the Product as authorized by this Agreement:

(i) are debarred under Section 306(a) or 306(b) of the FD&C Act;

(ii) have been charged with, or convicted of, any felony or misdemeanor under Applicable Laws related to any of the following: (A) the development or approval of any drug product or the regulation of any drug product under the FD&C Act; (B) a conspiracy to commit, aid or abet the development or approval of any drug product or regulation of any drug product; (C) health care program-related crimes (involving Medicare or any state health care program); (D) patient abuse, controlled substances, bribery, payment of illegal gratuities, fraud, perjury, false statement, racketeering, blackmail, extortion, falsification or destruction of records; (E) interference with, obstruction of an investigation into, or prosecution of, any criminal offense; or (F) a conspiracy to commit, aid or abet any of these listed felonies or misdemeanors; and

(iii) is excluded, suspended or debarred from participation, or otherwise ineligible to participate, in any United States federal or state health care programs (including convicted of a criminal offense that falls within the scope of 42 U.S.C. §1320a-7 but not yet excluded, debarred, suspended, or otherwise declared ineligible), or excluded, suspended or debarred from participation, or otherwise ineligible to participate, in any United States federal procurement or nonprocurement programs.

(b) Each Party will notify the other Party promptly, but in no event later than five (5) Business Days, after knowledge of any exclusion, debarment, suspension or other ineligibility set forth in Section 9.6(a)(iii) occurring during the Term, or if such Party concludes based on its good faith business judgment that a pending action or investigation is likely to lead to the exclusion, debarment, suspension or other ineligibility of such Party.

9.7 **New Generation Compounds.** Pursuant to Section 2.6 of the MTPC Agreement, VIVUS has been granted a right of first refusal and certain related rights by MTPC in connection with New Generation Compounds, as defined in the MTPC Agreement. VIVUS hereby agrees that, at Licensee's written request, VIVUS shall exercise such rights with respect to the Licensee Territory, and shall negotiate with MTPC in good faith to obtain the right to sublicense such rights to Licensee, and Licensee shall be responsible for any and all monetary obligations associated therewith, including (i) any and all payment obligations to MTPC or any third party under any arrangement for such rights and (ii) out-of-pocket costs incurred by VIVUS in connection with the exercise of such rights and related negotiations, provided, however, that (*x*) in the case of the foregoing clause (i), VIVUS shall have provided Licensee ample opportunity to review any such proposed arrangements, and consulted and reasonably cooperated with Licensee in connection with the negotiation of any such arrangements, and (*y*) in the case of the foregoing clause (ii), all such out-of-pocket costs shall have been expressly approved by Licensee prior to the incurrence thereof by VIVUS. All additional sublicensable rights obtained by VIVUS through exercise of such rights shall be sublicensed to Licensee and governed by the terms of this Agreement, subject to the terms of any relevant arrangement between VIVUS and MTPC.

9.8 **No Other Representations or Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 9, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY, IS MADE OR GIVEN BY OR ON BEHALF OF A PARTY. ALL REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

ARTICLE 10
INDEMNIFICATION

10.1 **Indemnification by VIVUS.** VIVUS shall defend, indemnify, and hold harmless Licensee, its Affiliates, and their respective officers, directors, employees, consultants and authorized agents and their respective successors and assigns or heirs, as the case may be (the "**Licensee Indemnitees**") from and against any and all Losses incurred by such Licensee Indemnitee based on or arising out of:

(a) any misrepresentation or breach of any of VIVUS' representations, warranties, covenants or obligations under this Agreement;

(b) the negligence or willful misconduct of, or violation of Applicable Law by, VIVUS, its Affiliates, licensees, distributors or their respective officers, directors, employees, consultants or authorized agents under this Agreement; or

(c) the Commercialization of any Product by VIVUS, its Affiliates, and its current and former sublicensees.

The foregoing indemnity obligations shall not apply to the extent that the Losses of such Licensee Indemnitee were caused by: (i) a breach of any of Licensee's representations, warranties, covenants, or obligations under this Agreement; or (ii) the negligence or willful misconduct of, or violation of Applicable Law by, such Licensee Indemnitee.

10.2 **Indemnification by Licensee.** Licensee shall defend, indemnify and hold harmless VIVUS, its Affiliates, and their respective officers, directors, employees, consultants and authorized agents and their respective successors and assigns or heirs, as the case may be (the "**VIVUS Indemnitees**") from and against any and all Losses incurred by such VIVUS Indemnitee based on or arising out of:

(a) any misrepresentation or breach of any of Licensee's representations, warranties, covenants or obligations under this Agreement;

(b) the negligence or willful misconduct of, or violation of Applicable Law by, Licensee, its Affiliates, licensees, distributors or their respective officers, directors, employees, consultants or authorized agents under this Agreement; or

(c) the Commercialization of any Product by Licensee, its Affiliates, and sublicensees.

The foregoing indemnity obligation shall not apply to the extent that the Losses of such VIVUS Indemnitee were caused by: (i) a breach of any of VIVUS 's representations, warranties, covenants, or obligations under the Agreement; or (ii) the negligence or willful misconduct of, or violation of Applicable Law by, such VIVUS Indemnitee.

10.3 **Indemnification Procedures.** The Party claiming indemnity under this ARTICLE 10 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly and in no event later than thirty (30) days after learning of a written Claim ("**Indemnified Claim**"). Failure by an Indemnified Party to give notice of an Indemnified Claim within thirty (30) days of receiving a writing reflecting such Claim shall not relieve the Indemnifying Party of its indemnification obligations hereunder except and solely to the extent that such Indemnifying Party is actually prejudiced as a result of such failure to give such notice. The Indemnifying Party shall have the right to assume and control the defense of the Indemnified Claim with counsel of its choice so long as the Indemnifying Party is conducting a good faith and diligent defense. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance in connection with the defense of the Indemnified Claim. The Indemnified Party may monitor such defense with counsel of its own choosing at its sole expense; provided, that if under applicable standards of professional conduct a conflict of interest exists between the Indemnifying Party and the Indemnified Party in respect of such claim, such Indemnified Party shall have the right to employ separate counsel to represent such Indemnified Party with respect to the matters as to which a conflict of interest exists and in that event the reasonable fees and expenses of such separate counsel shall be paid by the Indemnifying Party. The Indemnifying Party may not settle the Indemnified Claim without the prior written consent of the Indemnified Party, such consent shall not be unreasonably withheld, delayed or conditioned. If the Indemnifying Party does not assume and conduct the defense of the Indemnified Claim as provided above: (a) the Indemnified Party may assume and conduct the defense of the Indemnified claim at the Indemnifying Party's expense; (b) the Indemnified Party may consent to the entry of any judgment or enter into any settlement with respect to the Indemnified Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith); and (c) the Indemnifying Party will remain responsible to indemnify the Indemnified Party for Losses as provided in this ARTICLE 10.

10.4 **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, COSTS OR EXPENSES (INCLUDING LOST PROFITS, LOST REVENUES AND/OR LOST SAVINGS) ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS SECTION 10.4 IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY IN CONNECTION WITH THIRD PARTY CLAIMS UNDER SECTION 10.1 OR 10.2, (B) DAMAGES AVAILABLE FOR A PARTY'S BREACH OF ARTICLE 11, OR (C) DAMAGES TO THE EXTENT ARISING FROM OR RELATING TO WILLFUL MISCONDUCT OR FRAUDULENT ACTS OR OMISSIONS OF A PARTY.

10.5 **Insurance.** Licensee shall procure and maintain insurance during the Term of this Agreement and for a period of [***] ([***]) years following the termination or expiration of this Agreement, adequate to cover its obligations hereunder and which are consistent with normal business practices of prudent companies similarly situated. Such insurance shall be written by insurance companies with a rating of at least an "A-" in the latest addition of A.M. Best or its equivalent. Without limiting the generality of the foregoing, Licensee's insurance shall include, at minimum, the following coverages:

(a) commercial general liability coverage with minimum per claim limits of at least [***] per occurrence and [***] annual aggregate, the policy(ies) for which shall (A) name VIVUS as an additional insured, and (B) be primary and non-contributory;

(b) automobile liability coverage covering all owned, hired and non-owned automobile equipment with minimum per claim limits of [***] per occurrence and annual aggregate, the policy(ies) for which shall name VIVUS as an additional insured;

(c) excess liability/umbrella coverage with minimum per claim limits of at least [***] per occurrence and annual aggregate;

(d) products liability coverage with minimum per claim limits of at least [***] per occurrence and annual aggregate with a [***] ([***]) year extended reporting period endorsement, the policy(ies) for which shall name VIVUS as an additional insured; and

(e) property coverage having limits adequate for Product inventory in Licensee's care, custody, and/or control and for Product in transit to and from Licensee.

It is understood that the insurance requirements above shall not be construed to create a limit of Licensee's liability with respect to its indemnification obligations under this ARTICLE 10. Licensee shall provide VIVUS with written evidence of such insurance upon written request. Licensee shall provide VIVUS with written notice at least thirty (30) days prior to the cancellation, non-renewal or material change in such insurance or self-insurance that materially adversely affects the rights of VIVUS hereunder.

ARTICLE 11 CONFIDENTIALITY

11.1 **Confidentiality.** Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, the receiving Party agrees that, for the Term and for five (5) years thereafter, it shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as provided for in this Agreement any Confidential Information of the disclosing Party except for that portion of such information or materials that the receiving Party can demonstrate by competent proof:

(a) was already known to the receiving Party or its Affiliate, other than under, an obligation of confidentiality, at the time of disclosure by the disclosing Party;

(b) was generally available to the public or otherwise part of the public domain at the time of its disclosure to the receiving Party;

(c) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the receiving Party in breach of this Agreement;

(d) is subsequently disclosed to the receiving Party or its Affiliate by a Third Party without obligations of confidentiality with respect thereto; or

(e) is subsequently independently discovered or developed by the receiving Party or its Affiliate without the aid, application, or use of Confidential Information.

Notwithstanding the foregoing, the receiving Party may disclose without violation of this Agreement such portion of the Confidential Information as is required or permitted to be disclosed if, on the advice of counsel, it is required under Applicable Law or pursuant to legal process to disclose such Confidential Information of the disclosing Party; provided that unless otherwise prohibited by Applicable Law, the receiving Party first advises the disclosing Party of such intended disclosure and provides the disclosing Party with the opportunity to seek appropriate judicial or administrative relief to avoid, or obtain confidential treatment of, such disclosure at the disclosing Party's sole cost and expense.

11.2 **Authorized Disclosure.** The receiving Party may disclose Confidential Information belonging to the disclosing Party to the extent the receiving Party determines such disclosure is reasonably necessary in the following situations:

(a) prosecuting or defending litigation relating to this Agreement;

(b) in the case of VIVUS as the receiving Party, subject to prior written notice to Licensee, disclosure to MTPC as required pursuant to the MTPC Agreement;

(c) in the case of VIVUS as the receiving Party, disclosure to its licensees, sublicensees, and collaborators with respect to the Product outside the Territory or outside the Field, but solely to the extent that such Confidential Information (i) raises any material concerns regarding the safety or efficacy of any Product; (ii) indicates or suggests a potential material liability of either VIVUS or the applicable licensee, sublicensee, or collaborator to Third Parties in connection with any Product; (iii) is reasonably likely to lead to a recall or market withdrawal of any Product; or (iv) relates to any Product and is reasonably likely to have a material impact on a Regulatory Approval, Pricing Approval, or the Commercialization of any Product in such licensee's, sublicensee's, or collaborator's territory; provided that each such Person must be bound by obligations of confidentiality and non-use no less stringent than those set forth in Section 11.1 prior to any such disclosure (it being understood that receiving Party shall be liable for any breach of such confidentiality and non-use obligations by any such Person);

(d) disclosure to the receiving Party's Affiliates' and their respective directors, officers, employees, consultants, attorneys, professional advisors, bankers, lenders, insurers, sublicensees, suppliers and distributers only on a need-to-know basis and solely as necessary in connection with this Agreement; provided that each such Person must be bound by obligations of confidentiality and non-use on substantially similar terms as those set forth in Section 11.1 prior to any such disclosure (it being understood that receiving Party shall be liable for any breach of such confidentiality and non-use obligations by any such Person);

(e) disclosure to any bona fide potential or actual investor, acquirer, merger partner, or other potential or actual financial partner (and/or their respective consultants, attorneys, professional advisors) on a need-to-know basis and solely for the purpose of evaluating a potential investment, acquisition, merger, or similar transaction; provided that each such Person must be bound by obligations of confidentiality and non-use on substantially similar terms as those set forth in Section 11.1 prior to any such disclosure (it being understood that the receiving Party shall be liable for any breach of such confidentiality and non-use obligations by any such Person); and

(f) disclosure to any Financing Entity (and/or their respective consultants, attorneys, professional advisors) on a need-to-know basis and solely for the purpose of evaluating a potential Debt Financing or similar transaction or the enforcement thereof; provided that each such Person must be bound by written obligations of confidentiality and non-use on terms that are no less protective than those set forth in Section 11.1 prior to any such disclosure (it being understood that the receiving Party shall be solely liable for any breach of such confidentiality and non-use obligations by any such Person).

11.3 **Publicity; Terms of Agreement.**

(a) The Parties agree that the material terms of this Agreement are the Confidential Information of both Parties, subject to the authorized disclosure provisions set forth in Section 11.2 and this Section 11.3.

(b) The Parties have agreed to make a joint public announcement of the execution of this Agreement substantially in the form of the press release attached as Exhibit D on or after the Effective Date. After release of such press release announcing this Agreement, if either Party desires to make a public announcement concerning the material terms of this Agreement, such Party shall give reasonable prior advance notice of the proposed text of such announcement to the other Party for its prior review and approval, such approval not to be unreasonably withheld, conditioned or delayed. A Party commenting on such a proposed press release shall provide its comments, if any, within forty-eight (48) hours after receiving the press release for review. Neither Party shall be required to seek the permission of the other Party to disclose any information already disclosed or otherwise in the public domain, provided such information remains accurate.

(c) Either Party or any of its Affiliates (the "**Filing Party**") may publicly disclose without violation of this Agreement, such terms of this Agreement as are, on the advice of such Filing Party's counsel, required by the rules and regulations of the SEC or any other applicable entity having regulatory authority over such Filing Party's securities; provided that such Filing Party shall advise the other Party of such intended disclosure and request confidential treatment of certain commercial terms and technical terms hereof to the extent such confidential treatment is reasonably available to such Filing Party. In the event of any such filing, such Filing Party will provide such other Party, a reasonable time prior to filing, with a copy of the Agreement marked to show provisions for which such Filing Party intends to seek confidential treatment and shall reasonably consider and incorporate such other Party's comments thereon to the extent consistent with the legal requirements applicable to such Filing Party and that govern redaction of information from material agreements that must be publicly filed. Such other Party shall provide the Filing Party any such comments as promptly as practicable. The intention of the Parties is to agree upon a single redacted version of the Agreement to be filed with the SEC or any other applicable entity.

ARTICLE 12
TERM AND TERMINATION

12.1 **Term.** This Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to this ARTICLE 12, shall remain in effect until the expiration of the last-to-expire payment obligation in ARTICLE 7 (the "**Term**"). Upon the expiration of the Term, the licenses and covenant in Sections 2.1 and 2.9 shall become fully paid-up, royalty-free, perpetual and irrevocable.

12.2 **Termination For Cause, Convenience, or Generic Entry.**

(a) **Material Breach**. Either Party shall have the right to terminate this Agreement, upon written notice to the other Party if such other Party, after receiving written notice from the terminating Party identifying a material breach by such other Party of its obligations under

this Agreement, fails to cure (or if not curable within such time period, adopt a plan for cure during such time period) such material breach within [***] from the date of such notice (or, in the case of payment obligations, [***] from the date of such notice); provided, however, that in the event the non-terminating Party contests any such asserted breach in good faith and diligently pursues the dispute resolution procedures set forth in ARTICLE 13, such [***] cure period shall be tolled or suspended until the final resolution of such dispute pursuant to the terms of, and in accordance with, the terms and provisions of ARTICLE 13, subject to any exercise by MTPC of its right of termination of the MTPC Agreement due to any material breach of the provisions or conditions of the MTPC Agreement arising from the facts or circumstances that resulted in the material breach by such non-terminating Party hereunder. Notwithstanding the foregoing, in the event of any uncured material breach by Licensee of its obligations hereunder, VIVUS shall only exercise its right to terminate this Agreement under this Section 12.2(a) to the extent that MTPC exercises its right of termination of the MTPC Agreement due to a material breach of the MTPC Agreement. For the avoidance of doubt (and without limiting VIVUS' remedies for any other breaches by Licensee), Licensee's uncured failure to pay the amounts set forth in Section 7.1 by the deadlines set forth therein shall each be deemed to be a material breach

(b) **Government Action**. VIVUS shall have the right to terminate this Agreement immediately upon written notice to Licensee if Licensee is excluded from participation in United States federal healthcare programs and fails to cure such exclusion within one hundred twenty (120) days.

(c) **Licensee Termination for Convenience**. Licensee shall have the right to terminate this Agreement for any reason upon one hundred eighty (180) days prior written notice to VIVUS.

(d) **Licensee Termination Upon Generic Entry**. Licensee shall have the right to terminate this Agreement upon a Generic Entry after providing thirty (30) days written notice. Within thirty (30) days after receipt of an invoice from VIVUS, Licensee shall reimburse VIVUS for any cancelation fees, penalties, or other payments owed by VIVUS to a Third Party as a direct result of such termination, as well as any other non-cancelable expenses reasonably incurred by VIVUS in connection with its obligations under this Agreement or the Commercial Supply Agreement prior to the effective date of termination.

12.3 **Termination for Patent Challenge.** VIVUS may terminate this Agreement in its entirety upon written notice to Licensee if Licensee or any Affiliate, directly or indirectly, individually or in association with any other person or entity, commences any action or proceeding that challenges the validity or enforceability of any VIVUS Patent in the Licensee Territory, except if such action or proceeding is commenced in response to a claim asserted by VIVUS against Licensee or the Licensee Affiliate for infringement of such VIVUS Patent. In the event Licensee is aware that a sublicensee of its license rights hereunder, directly or indirectly, individually or in association with any other person or entity, commences any action or proceeding that challenges the validity, enforceability or scope of any VIVUS Patent in the Licensee Territory, Licensee shall promptly terminate the applicable sublicense. If Licensee does not terminate such sublicense within thirty (30) days of Licensee being made aware of such challenge by VIVUS, VIVUS may terminate this Agreement in its entirety upon written notice to Licensee.

12.4 **Termination Upon Bankruptcy.** Either Party shall have the right to terminate this Agreement immediately by providing written notice, if: (a) the other Party applies for or consents to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its assets, (b) the other Party makes a general assignment for the benefit of its creditors, (c) the other Party is dissolved or liquidated in full or in substantial part, (d) the other Party commences a voluntary case under Chapter 7 (a "**Chapter 7 Case**") of title 11 of the United States Code (the "**United States Bankruptcy Code**") or consents to any such relief or to the appointment of or taking possession of its property by any official in such an involuntary case or such other proceeding commenced against it, (e) the other Party takes any corporate action for the purpose of effecting any of the foregoing, (f) a case under Chapter 11 of the United States Bankruptcy Code in respect of such Party is converted to a Chapter 7 Case, or (g) the other Party becomes the subject of an involuntary Chapter 7 Case or other proceeding seeking liquidation with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect that is not dismissed within sixty (60) days after commencement.

12.5 **Effect of Termination of the Agreement.** Except as provided in this Section 12.5 upon any termination of this Agreement other than the expiration of the Term, the following shall apply (in addition to any other rights and obligations under Section 12.6 or otherwise under this Agreement with respect to such termination):

(a) **The License**. The License shall terminate (and, as between the Parties, all rights in the VIVUS Technology shall revert to VIVUS); provided that in the event that Licensee terminates this Agreement pursuant to Section 12.2(a) or 12.4, the License shall remain in full force and effect (but on a non-exclusive basis), solely to the extent necessary to permit Licensee, its Affiliates, or its sublicenses to sell any inventories of Products in the Licensee Territory pursuant to Section 12.5(f). For the avoidance of doubt, Section 2.9 shall not apply to any activities after the effective date of termination, except for those activities permitted by Section 12.5(f).

(b) **VIVUS License**. The VIVUS License (other than Section 2.3(a)) shall survive any termination of this Agreement. In addition, in the event of any termination of this Agreement other than by Licensee pursuant to Section 12.2(a) or 12.4, Licensee shall automatically grant to VIVUS a non-exclusive, royalty-free, sublicensable (through multiple tiers) license under the Licensee Technology, to use, make, have made, distribute, import, Develop, Promote, market, sell, offer for sale, and otherwise Commercialize Products in the Field in the Licensee Territory.

(c) **Marks**. Upon any expiration or early termination of this Agreement, Licensee shall and hereby agrees to sell, assign, convey, transfer and deliver all rights in the Assigned Trademarks, any goodwill associated therewith, and all rights in and to any of the foregoing, to VIVUS, and Licensee shall assign to VIVUS any Licensee Trademarks incorporating the mark STENDRA that are Controlled by Licensee and then being used to Commercialize Product in the Licensee Territory, but expressly excluding (i) Licensee's corporate name, (ii) any other mark that incorporates or is derived from Licensee's corporate names, and (iii) any other proprietary mark of Licensee that is used by Licensee independently of the Product, provided that in the event of expiration of this Agreement, to the extent that Licensee continues to Commercialize the Product in the Licensee Territory under the Assigned Trademarks, then upon written request by Licensee, VIVUS agrees to waive the right to have the ownership of the Assigned Trademarks transferred to VIVUS so long as Licensee pays the Trademark Royalty Payments in accordance with Exhibit C.

(d) **Regulatory Materials**. To the extent permitted by Applicable Law, Licensee shall transfer and assign to VIVUS all Regulatory Materials, Regulatory Approvals, and Pricing Approvals with respect to Product that are Controlled by Licensee or its Affiliates, if any; *provided* that in the event that Licensee terminates this Agreement pursuant to Section 12.2(a) or 12.4, Licensee shall be permitted (on a non-exclusive basis) to sell under such Regulatory Materials, Regulatory Approvals, and Pricing Approvals any inventories of Products in the Licensee Territory to the extent permitted pursuant to Section 12.5(f). The Parties agree that any failure by Licensee to perform its obligation to transfer and assign the Product Marketing Authorization to VIVUS following termination in accordance with this section may cause irreparable harm to VIVUS, for which damages may not be an adequate remedy. Therefore, in addition to its rights and remedies otherwise available at law, including, without limitation, the recovery of damages for breach of this Agreement, VIVUS shall be entitled to seek specific performance of such obligation, along with such other and further equitable relief as a court may deem proper under the circumstances.

(e) **Transition Assistance**. In the event of any early termination of this Agreement, to the extent the Transition Services Agreement has not expired, at VIVUS' request, Licensee shall promptly transfer and assign to VIVUS all of Licensee's rights, title, interest in, liabilities and obligations under the Transition Services Agreement; provided that, Licensee shall be responsible for any liabilities and obligations accrued by Licensee under the Transition Services Agreement prior to the effective date of such transfer and assignment, subject to VIVUS' indemnification obligations under Section 10.1 hereof. In the event of any termination of this Agreement other than termination by Licensee pursuant to Section 12.2(a) or 12.4, Licensee shall provide reasonable assistance, at no cost to VIVUS, as may be reasonably necessary for VIVUS to commence or continue Developing, manufacturing and Commercializing the Products in the Licensee Territory, including without limitation, upon request of VIVUS, using commercially reasonable efforts to transfer any agreements or arrangements with distributors that apply solely to the sale or supply of Product in the Licensee Territory.

(f) **Sell-Through of Inventory**. For a period of six (6) months following the effective date of termination, Licensee, its Affiliates, and its sublicensees may sell or otherwise dispose of the inventory of Product then on hand or in production or for which substantial preparation for manufacture has been made or which they are legally obligated to supply, provided that this provision shall not limit, and Licensee shall satisfy, Licensee's obligations under the Commercial Supply Agreement with respect to any minimum purchase requirements or related obligations thereunder.

(g) **Sublicense Agreements**. The Parties agree that upon termination of this Agreement for any reason, all sublicenses granted by Licensee to Affiliates or Third Parties under the VIVUS Technology shall immediately terminate.

(h) **Certain Pre-Termination Liabilities**. Following termination of this Agreement, Licensee shall retain liability for payment of all gross to net sales deductions (including returns, rebates and chargeback) of Products that were sold prior to the effective date of termination. To the extent that that any such deductions are charged to or otherwise borne by VIVUS, Licensee shall reimburse VIVUS promptly (but in any event no later than thirty (30) days) following Licensee's receipt of an invoice therefor. For the avoidance of doubt, the foregoing is not intended to prevent Licensee from properly deducting the Net Sales Deductions when calculating Net Sales.

(i) **Sales Volume**. Licensee shall use Commercially Reasonable Efforts to ensure that the average monthly sales volume of each Product leading up to the effective date of termination does not substantially exceed the average monthly sales volume of such Product for the six (6) month period prior to date of the notice of termination, and in any event Licensee shall not take any affirmative action to cause such outcome.

12.6 **Accrued Liabilities; Other Remedies.** Termination or expiration of this Agreement for any reason shall not release either Party from any liability or obligation that already has accrued prior to such expiration or termination (including any milestone or other payment that has been triggered by an event occurring prior to the effective date of termination or expiration), nor affect the survival of any provision hereof to the extent it is expressly stated to survive such termination. Termination or expiration of this Agreement for any reason shall not constitute a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, that a Party may have hereunder or that may arise out of or in connection with such termination or expiration.

12.7 **Rights in Bankruptcy.** All rights and licenses granted under or pursuant to this Agreement by VIVUS and Licensee are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101 of the United States Bankruptcy Code. The Parties agree that each Party, as licensee of certain rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the United States Bankruptcy Code. The Parties further agree that, in the event of (i) the commencement of a case by or against a Party (such Party, the "**Debtor**") under the United States Bankruptcy Code, (ii) the rejection of this Agreement by the Debtor pursuant to section 365 of the United States Bankruptcy Code, and (iii) the election of the other Party to retain its rights under section 365(n)(1)(B) of the United States Bankruptcy Code, then the other Party shall be entitled to a complete duplicate of (or complete access to, as appropriate) any intellectual property licensed to such other Party and all embodiments of such intellectual property, which, if not already in such other Party's possession, shall be promptly delivered to it following the rejection of this Agreement by the Debtor upon written request therefor by the other Party.

12.8 **Survival.** The following provisions shall survive any expiration or termination of this Agreement: ARTICLE 1, 10, 11, 13, 14 and Sections 7.6, 8.1, 12.5, 12.6, 12.7, and 12.8.

ARTICLE 13
DISPUTE RESOLUTION

13.1 **Disputes.** The Parties recognize that disputes as to certain matters may from time to time arise during the Term which relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this ARTICLE 13 if and when a dispute arises under this Agreement.

(a) **Referred from Committee**. Any disputes, controversies or differences which may arise from the JSC pursuant to ARTICLE 3 shall be resolved in accordance with Section 3.5.

(b) **Good Faith Resolution**. Any disputes, controversies or differences which may arise between the Parties out of or in relation to or in connection with this Agreement, including any alleged failure to perform, or breach, of this Agreement, or any issue relating to the interpretation or application of this Agreement, then upon the request of either Party, the Parties agree to meet and discuss in good faith a possible resolution thereof, which good faith efforts shall include at least one (1) in-person meeting between the chief executive officers of each Party. If the matter is not resolved within thirty (30) days following the request for discussions, either Party may then invoke the provisions of Section 13.2.

13.2 **Arbitration.** Any dispute, controversy or claim arising out of or relating to the validity, construction, interpretation, enforceability, breach, performance, application or termination of this Agreement that is not resolved pursuant to Section 13.1, except for a dispute, claim or controversy under Section 13.10, shall be settled by binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures of JAMS then in effect (the "**JAMS Rules**"), except as otherwise provided herein. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "**Federal Arbitration Act**"), to the exclusion of any inconsistent state laws. The United States Federal Rules of Civil Procedure shall govern discovery and the rules of evidence for the arbitration. The arbitration will be conducted in New York, New York and the Parties consent to the personal jurisdiction of the United States federal courts, for any case arising out of or otherwise related to this arbitration, its conduct and its enforcement. Any situation not expressly covered by this Agreement shall be decided in accordance with the JAMS Rules.

13.3 **Arbitrator.** The arbitrator shall be one (1) neutral, independent and impartial arbitrator selected from a pool of retired federal judges or magistrates to be presented to the Parties by JAMS. Failing the agreement of the Parties as to the selection of the arbitrator within thirty (30) days, the arbitrator shall be appointed by JAMS in accordance with the JAMS Rules.

13.4 **Decision.** The power of the arbitrator to fashion procedures and remedies within the scope of this Agreement is recognized by the Parties as essential to the success of the arbitration process. The arbitrator shall not have the authority to fashion remedies which would not be available to a federal judge hearing the same dispute. The arbitrator is encouraged to operate on this premise in an effort to reach a fair and just decision. Reasons for the arbitrator's decisions should be set forth in accordance with the JAMS Rules. Such a written decision shall be rendered by the arbitrator following a full comprehensive hearing, no later than 6 months following the selection of the arbitrator as provided for in Section 13.3.

13.5 **Award.** Any award shall be promptly paid in United States dollars free of any tax, deduction or offset; and any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by Applicable Law, be charged against the Party resisting enforcement. Each Party agrees to abide by the award rendered in any arbitration conducted pursuant to this ARTICLE 13, and agrees that, subject to the Federal Arbitration Act, judgment may be entered upon the final award in any court of competent jurisdiction and that other courts may award full faith and credit to such judgment in order to enforce such award. The award shall include interest from the date of the award until paid in full, at a rate fixed by the arbitrator and the arbitrator may, in his or her discretion, award pre judgment interest. With respect to money damages, nothing contained herein shall be construed to permit the arbitrator or any court or any other forum to award punitive or exemplary damages. By entering into this agreement to arbitrate, the Parties expressly waive any claim for punitive or exemplary damages.

13.6 **Costs.** Each Party shall bear its own legal fees. The arbitrator shall assess his or her costs, fees and expenses against the Party losing the arbitration and shall require such losing Party to reimburse the other Party for all of its reasonable attorneys' fees, costs, and disbursements arising out of the arbitration (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, and so on). Notwithstanding the foregoing, if the arbitrator believes that neither Party is the clear loser, the arbitrator shall divide his or her costs, fees, and expenses according to his or her sole discretion, and each Party shall bear its own attorney's fees, costs, and disbursements arising out of the arbitration.

13.7 **Injunctive Relief.** Provided a Party has made a sufficient showing under the rules and standards set forth in the Federal Rules of Civil Procedure and applicable case law, the arbitrator shall have the freedom to invoke, and the Parties agree to abide by, injunctive measures after either Party submits in writing for arbitration claims requiring immediate relief. Additionally, nothing in this ARTICLE 13 will preclude either Party from seeking equitable relief or interim or provisional relief from a court of competent jurisdiction, including a temporary restraining order, preliminary injunction or other interim equitable relief, concerning a dispute either prior to or during any arbitration if necessary to protect the interests of such Party or to preserve the status quo pending the arbitration proceeding.

13.8 **Confidentiality.** The arbitration proceeding shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard each Party's Confidential Information. Except as required to comply with Applicable Laws, including rules and regulations promulgated by the SEC, The NASDAQ Stock Market or any securities exchanges, no Party shall make (or instruct the arbitrator to make) any public announcement with respect to the proceedings or decision of the arbitrator without prior written consent of the other Party. The existence of any dispute submitted to arbitration, and the award, shall be kept in confidence by the Parties and the arbitrator, except as required in connection with the enforcement of such award or as otherwise required by Applicable Law.

13.9 **Survivability.** Any duty to arbitrate under this Agreement shall remain in effect and be enforceable after termination of this Agreement for any reason.

13.10 **Patent and Trademark Disputes; Financing Entity Disputes.**

(a) Notwithstanding anything to the contrary in this ARTICLE 13, any dispute, controversy or claim relating to the scope, validity, enforceability or infringement of the VIVUS Patents, Assigned Trademarks, Licensee Patents, Licensee Trademarks or Joint Patents shall be submitted to a court of competent jurisdiction in the country in which such patent or trademark rights were granted or arose.

(b) Notwithstanding anything to the contrary in this ARTICLE 13, any Financing Entity may bring a proceeding in a court of competent jurisdiction located in the State of New York solely to enforce its rights under Sections 5.1(c), 13.10(b), 14.1, 14.5 and 14.8 hereof. Such courts of competent jurisdiction located in the State of New York shall have the sole and exclusive jurisdiction to hear and adjudicate any claims pursuant to this Section 13.10(b).

ARTICLE 14
MISCELLANEOUS

14.1 **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, together with the letter agreement dated September 30th, 2016 between VIVUS and Hercules Capital, Inc., and the terms of the MTPC Agreement which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior agreements and understandings between the Parties with respect to the subject matter hereof. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. Notwithstanding anything to the contrary in this Section 14.1, no amendment of the definitions of "Financing Entity," "Financing Default," "Qualified Assignee," or "Permitted Assignment" or Sections 5.1(c), 13.1013.10(b), 14.1, 14.5 and 14.8 hereof that effects the rights of any Financing Entity shall be effective without the prior written consent of each Financing Entity.

14.2 **Force Majeure.** Both Parties shall be excused from the performance of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall mean conditions beyond the control of the Parties, including an act of God, war, civil commotion, terrorist act, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and failure of plant or machinery (provided that such failure could not have been prevented by the exercise of skill, diligence, and prudence that would be reasonably and ordinarily expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances). Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a force majeure affecting such Party.

14.3 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be addressed to the appropriate Party at the address specified below or such other address as may be specified by such Party in writing in accordance with this Section 14.3, and shall be deemed to have been given for all purposes when received, if hand-delivered or by means of facsimile, or one (1) Business Day after being sent by a reputable overnight delivery service.

If to VIVUS:	VIVUS, Inc. 351 E. Evelyn Ave. Mountain View, CA 94041 Fax: (650) 934-5320 Attention: General Counsel Email: generalcounsel@vivus.com
With a copy to:	Weil, Gotshal & Manges LLP 767 Fifth Avenue New York, NY 10153 Fax: (212) 310-8007 Attention: Michael A. Epstein Email: michael.epstein@weil.com
If to Licensee:	Metuchen Pharmaceuticals LLC 11 Commerce Drive, 1st Floor Cranford, NJ 07016 Facsimile: (908) 272-3084 Attention: Greg Ford Email: GFord@kfe-llc.com

With a copy to: **[***]**

With a copy to: Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, New Jersey 07068
Facsimile: (973) 597-2400
Attention: Michael J. Lerner
Email: MLerner@lowenstein.com

14.4 **No Strict Construction; Headings; Interpretation.** This Agreement has been prepared jointly and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section. The definitions of the terms herein apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" will be deemed to be followed by the phrase "without limitation." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference to any laws herein will be construed as referring to such laws and any rules or regulations promulgated thereunder as from time to time enacted, repealed or amended, (c) any reference herein to any Person will be construed to include such Person's successors and assigns (including any Financing Entity or Qualified Assignee, as applicable), (d) the words "herein", "hereof" and "hereunder", and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) any reference herein to the words "mutually agree" or "mutual written agreement" will not impose any obligation on either Party to agree to any terms relating thereto or to engage in discussions relating to such terms except as such Party may determine in such Party's sole discretion, except as expressly provided in this Agreement, (f) as applied to a Party, the word "will" shall be construed to have the same meaning and effect as the word "shall," and (g) all references herein without a reference to any other agreement to Articles, Sections, or Exhibits will be construed to refer to Articles, Sections, and Exhibits of or to this Agreement.

14.5 **Assignment.** Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that (a) a Party may make such an assignment without the other Party's consent to such Party's Affiliate or to a successor to all or substantially all of the assets or business of such Party to which this Agreement pertains, (b) Licensee may assign this Agreement and any of Licensee's rights or obligations hereunder as collateral to any Financing Entity pursuant to one or more Financing Documents without the consent of VIVUS or any other Person, (c) neither the consent of VIVUS nor any other Person shall be required for the assignment of this Agreement and all of Licensee's rights, obligations and liabilities hereunder (including any and all liabilities that accrued prior to such assignment, but excluding liabilities under Sections 9.4(b) and 10.2 hereof) to any Financing Entity upon the occurrence of a Financing Default, provided that at least five (5) Business Days prior to any transfer or assignment of this Agreement in accordance with the terms of this clause (c), such Financing Entity provides VIVUS with a general description of the Financing Entity's business and operations or equivalent documentation, and (d) neither the consent of VIVUS nor any other Person shall be required for the assignment of this Agreement and all of Licensee's rights, obligations and liabilities hereunder by Licensee (with the consent of the Financing Entity, provided that the Licensee and the Financing Entity jointly provide timely notice to VIVUS of such consent) or any Financing Entity upon the occurrence of a Financing Default to any Qualified Assignee that is a successor to or assignee of all or substantially all of the assets or business of Licensee to which this Agreement pertains; provided that any assignment to a Financing Entity or a Qualified Assignee in connection with a Financing Default must also include an agreement, in writing, signed by such Financing Entity or Qualified Assignee, as applicable, to assume performance of all of Licensee's rights and obligations, and assume all of Licensee's outstanding liabilities (including any and all liabilities that accrued prior to such assignment, but excluding liabilities under Sections 9.4(b) and 10.2 hereof), provided that in the case of clauses (c) and (d) above, with respect to any liabilities accrued by Licensee (including Licensee's liabilities under Sections 9.4(b) and 10.2 hereof), such Financing Entity and/or such Qualified Assignee, as applicable, shall, at VIVUS' request and expense (which shall be limited to such Financing Entity's or Qualified Assignee's, as applicable, reasonable out-of- pocket-expenses), cooperate and provide reasonable assistance to VIVUS (including the providing, subject to a customary confidentiality agreement, of any relevant information to VIVUS in such Person's possession) in connection with, and to support, VIVUS' efforts to seek recovery for any Losses under Licensee's insurance policy), thereunder (any of the foregoing assignments, a "**Permitted Assignment**"). Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other Party, expressly assume performance of such rights and/or obligations. Any assignment or attempted assignment by either Party in violation of the terms of this Section 14.5 shall be null, void and of no legal effect. The VIVUS Technology shall exclude any intellectual property held or developed by a permitted successor of VIVUS prior to the transaction in which it became a successor of such Party, and the Licensee Technology shall exclude any intellectual property held or developed by a permitted successor of Licensee prior to the transaction in which it became a successor of such Party.

14.6 **Records Retention.** Each of VIVUS and Licensee will maintain complete and accurate records pertaining to its activities under this Agreement, including records pertaining to Development or Commercialization of any Products and reports and information provided to any Regulatory Authority or other Governmental Authority, in accordance with Applicable Law. Each of VIVUS and Licensee will retain such records for a duration prescribed by Applicable Law, but not in any event for less than five (5) years after the Effective Date (or longer if a Party is notified, ordered or otherwise required to maintain such records for a longer period in connection with a legal proceeding or government investigation).

14.7 **Governing Law.** Resolution of all disputes arising out of or related to this Agreement or the validity, construction, interpretation, enforcement, breach, performance, application or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of New York, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.

14.8 **Successors and Assigns; No Third Party Beneficiaries.** This Agreement will be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. No provision of this Agreement, express or implied, is intended to or will be deemed to confer upon Third Parties any right, benefit, remedy, claim, liability, reimbursement, claim of action or other right of any nature whatsoever under or by reason of this Agreement other than (i) the Parties and, to the extent provided in Sections 10.1 and 10.2, the Indemnified Parties and (ii) any Financing Entity solely with respect to Sections 5.1(c), 13.10(b), 14.1, 14.5, and this Section (and the Parties hereto acknowledge and agree that each Financing Entity (including Hercules Capital, Inc.) is an express third-party beneficiary of such Sections 5.1(c), 13.10(b), 14.1, 14.5, and this Section 14.8). Without limitation, this Agreement will not be construed so as to grant employees of either Party in any country any rights against the other Party pursuant to the laws of such country.

14.9 **Performance by Affiliates.** Any obligation of VIVUS under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at VIVUS' sole and exclusive option, either by VIVUS directly or by any Affiliate of VIVUS that VIVUS causes to satisfy, meet or fulfill such obligation, in whole or in part. Any obligation of Licensee under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at Licensee's sole and exclusive option, either by Licensee directly or by any Affiliate of Licensee that Licensee causes to satisfy, meet or fulfill such obligation, in whole or in part. Each of the Parties guarantees the performance of all actions, agreements and obligations to be performed by any Affiliates of such Party under the terms and conditions of this Agreement, and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

14.10 **Further Assurances and Actions.** Each Party, upon the request of the other Party, without further consideration, will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney, instruments and assurances as may be reasonably necessary to effect complete consummation of the transactions contemplated by this Agreement, and to do all such other acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement. The Parties agree to execute and deliver such other documents, certificates, agreements and other writings and to take such other actions as may be reasonably necessary in order to consummate or implement expeditiously the transactions contemplated by this Agreement.

14.11 **Severability.** If any one or more of the provisions of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction from which no appeal can be or is taken, the provision shall be considered severed from this Agreement and shall not serve to invalidate any remaining provisions hereof. The Parties shall make a good faith effort to replace any invalid or unenforceable provision with a valid and enforceable one such that the objectives contemplated by the Parties when entering this Agreement may be realized.

14.12 **No Waiver.** Any provision of this Agreement may be waived if, but only if, such waiver is in writing and is signed by the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

14.13 **Independent Contractors.** Each Party shall act solely as an independent contractor, and nothing in this Agreement shall be construed to give either Party the power or authority to act for, bind, or commit the other Party in any way. Nothing herein shall be construed to create the relationship of partners, principal and agent, or joint-venture partners between the Parties.

14.14 **Counterparts.** This Agreement may be executed in one (1) or more counterparts, including by facsimile or other electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date last signed below.

VIVUS, INC.

By: /s/ Seth H.Z. Fischer

Name: Seth H.Z. Fischer

Title: CEO

Date: 9/30/2016

METUCHEN PHARMACEUTICALS LLC

By: /s/ J. Gregory Ford

Name: J. Gregory Ford

Title: CEO

Date: 9/30/2016

Acknowledged and Agreed:

HERCULES CAPITAL, INC.

By: /s/ Melanie Grace

Name: Melanie Grace

Title: GC/CCO

Date: 9/30/2016

[Signature Page to License and Commercialization Agreement]

SCHEDULES

Schedule 4.4(b)	**U.S. Product Launch Quantities**
Schedule 9.2	**Disclosures to VIVUS' Representations and Warranties**
Schedule 9.3	**Disclosures to Assigned Trademarks Representations and Warranties**

EXHIBITS

Exhibit A	**Assigned Trademarks**
Exhibit B	**Commercial Supply Agreement**
Exhibit C	**Additional Financial Terms**
Exhibit D	**Press Release**
Exhibit E	**Letter Agreement**
Exhibit F	**Quality Agreement**
Exhibit G	**VIVUS Patents**

Schedule 4.4(b)

U.S. Product Launch Quantities, by dosage strength:

50 mg dosage strength – [***] tablets;

100 mg dosage strength – [***] tablets; and

200 mg dosage strength – [***] tablets.

Schedule 9.2

Disclosures to VIVUS Representations, Warranties and Covenants

Certain matters listed herein are for informational purposes only, and no disclosure herein shall be deemed an acknowledgment that such fact, item, matter, circumstance, transaction or event is required to be so disclosed pursuant to the Agreement. The inclusion of any fact, item, matter, circumstance, transaction or event in this Schedule 9.2 shall not be deemed to be an admission or representation that the fact, item, matter, circumstance, transaction or event is or is not "material" or would or would not have, individually or in the aggregate, a material adverse impact. Additionally, matters reflected in this Schedule 9.2 shall not be used as a basis for interpreting the terms "material," "materially," "materiality," "material adverse impact" or any other similar definition in the Agreement. The fact that certain information is contained herein is not an admission of liability under any applicable law or otherwise. Further, any disclosure in this Schedule 9.2 relating to any possible breach or violation of any agreement, law or regulation shall not be construed as an admission or indication that any such breach or violation exists or has actually occurred.

This Schedule 9.2 shall not be deemed or interpreted to broaden any representations or warranties of VIVUS and is qualified in its entirety by reference to the specific provisions of the Agreement.

Section 9.2

1. **Hetero ANDA Filing**

On June 20, 2016, VIVUS received a Paragraph IV certification notice from Hetero USA, Inc. indicating that it filed an ANDA with the FDA, requesting approval to market a generic version of STENDRA and contending that patents listed for STENDRA in the Orange Book at the time of the notice (U.S. Patents 6,656,935, and 7,501,409) (collectively "Patents-in-suit") are invalid, unenforceable and/or will not be infringed by the manufacture, use or sale of a generic form of STENDRA as described in their ANDA. On July 27, 2016, VIVUS filed the Hetero Litigation addressed in Section 8.4(b) on the basis that Hetero's submission of their ANDA to obtain approval to manufacture, use, sell, or offer for sale generic versions of STENDRA prior to the expiration of the Patents-in-suit constitutes infringement of one or more claims of those patents.

2. **Supplement Request**

The FDA Assessment addressed in Section 5.2(b) remains unpaid.

Schedule 9.3

Disclosures to Assigned Trademark Representations and Warranties

Certain matters listed herein are for informational purposes only, and no disclosure herein shall be deemed an acknowledgment that such fact, item, matter, circumstance, transaction or event is required to be so disclosed pursuant to the Agreement. The inclusion of any fact, item, matter, circumstance, transaction or event in this Schedule 9.3 shall not be deemed to be an admission or representation that the fact, item, matter, circumstance, transaction or event is or is not "material" or would or would not have, individually or in the aggregate, a material adverse impact. Additionally, matters reflected in this Schedule 9.3 shall not be used as a basis for interpreting the terms "material," "materially," "materiality," "material adverse impact" or any other similar definition in the Agreement. The fact that certain information is contained herein is not an admission of liability under any applicable law or otherwise. Further, any disclosure in this Schedule 9.3 relating to any possible breach or violation of any agreement, law or regulation shall not be construed as an admission or indication that any such breach or violation exists or has actually occurred.

This Schedule 9.3 shall not be deemed or interpreted to broaden any representations or warranties of VIVUS and is qualified in its entirety by reference to the specific provisions of the Agreement.

Section 9.3

1. The SPEDRA mark in India is the subject of an opposition by Sun Pharma. Sun Pharma did not pursue the opposition beyond an initial filing, but the Indian patent office has not yet indicated that the opposition is abandoned.

2. There was previously an opposition to the STENDRA mark in Peru, which has since been resolved in VIVUS' favor.

EXHIBIT A
ASSIGNED TRADEMARKS

Mark	Country	App. No. / Reg. No.	Date Filed	Reg. Date	Status
STENDRA	US	85-565411/4526269	09-MAR-2012	06-MAY-2014	Registered
STENDRA	Canada CA	1592942	05-SEP-2012		Allowed
STENDRA	India IN	2390407	05-SEP-2012		Pending
STENDRA	Argentina AR	3189354/2613896	06-SEP-2012	05-DEC-2013	Registered
STENDRA	Brazil BR	8400259441/40259441	10-SEP-2012	11-AUG-2015	Registered
STENDRA	Chile CL	1052848/1139476	05-APR-2013	04-NOV-2014	Registered
STENDRA	Columbia CO	1131863/489813	26-OCT-2012	26-MAR-2014	Registered
STENDRA	Peru	502951/00199499	06-AUG-2012	06-MAY-2013	Registered
STENDRA	Venezuela VE	2013-015411	09-AUG-2013		Pending
SPEDRA	Canada CA	1574172	19-APR-2012		Pending
SPEDRA	India IN	2319226	20-APR-2012		Published
SPEDRA	Argentina AR	3408270	08-MAY-2015		Published
SPEDRA	Brazil BR	909363250	12-MAY-2015		Published
SPEDRA	Columbia CO	15106101	08-MAY-2015		Published
	US	86-304551/4918812	09-JUN-2014	13-JAN-2015	Registered
	Canada	1703669	20-NOV-2014		Allowed
	Brazil	908728875	09-DEC-2014		Published

Mark	Country	App. No. / Reg. No.	Date Filed	Reg. Date	Status
	Columbia	521955	11-NOV-2014	31-JUL-2015	Registered
IT'S TIME FOR STENDRA	US	86-304491	09-JUN-2014		Pending
IT'S TIME FOR STENDRA	Canada	1703648	20-NOV-2014		Allowed

EXHIBIT B
COMMERCIAL SUPPLY AGREEMENT

EXHIBIT C
ADDITIONAL FINANCIAL TERMS

Royalty Payments for Product (solely during MTPC Royalty Period):

Annual Total MTPC Agreement Net Sales	***Royalty Percentage***
Portion up to US$500 million	[***] of such MTPC Agreement Net Sales
Portion in excess of US$500 million	[***] of such MTPC Agreement Net Sales

Additional Milestone Payments:

- A pro-rata share of US $[***], due when for the first time the total MTPC Agreement Net Sales during any calendar year of Product sold by VIVUS, its Affiliates, and sublicensees exceed [***] (the "**MTPC Milestone**"). The pro-rata share owed by Licensee will be calculated based on the relative Net Sales (as defined in the MTPC Agreement) of the Product sold by Licensee or its Affiliates or sublicensees in the Licensee Territory during the calendar year for which such milestone payment is owed compared to the Net Sales (as defined in the MTPC Agreement) of Product sold in the VIVUS Territory during such calendar year.

Trademark Royalty Payments:

In consideration for the trademark assignment pursuant to Section 8.6 of the Agreement and the use of the trademarks associated with the Product and the VIVUS Technology, Licensee shall (a) during [***] (collectively, the "**Trademark Royalty Payments**"). Thereafter, no further royalties shall be owed with respect to MTPC Agreement Net Sales of Product in such country. For the avoidance of doubt, the foregoing royalty shall be owed on MTPC Agreement Net Sales of all Products, regardless of whether such Products are sold under the Assigned Trademarks.

EXHIBIT D
PRESS RELEASE

VIVUS AND METUCHEN PHARMACEUTICALS ANNOUNCE LICENSE AGREEMENT FOR COMMERCIAL RIGHTS TO STENDRA

VIVUS grants an exclusive license to Metuchen Pharmaceuticals for STENDRA® (avanafil) commercial rights in the U.S., Canada, South America and India

MOUNTAIN VIEW, CA and CRANFORD, NJ – September 30, 2016 - VIVUS, Inc. (NASDAQ: VVUS; "VIVUS") and Metuchen Pharmaceuticals LLC ("Metuchen") today announced the signing of an agreement providing Metuchen, a fully-paid, perpetual license for exclusive rights to commercialize STENDRA® (avanafil) in the U.S., Canada, South America and India. The parties simultaneously signed a commercial supply agreement pursuant to which VIVUS will be responsible for the manufacture and supply of STENDRA to Metuchen for a mutually agreed term. For a period of 180 days, Metuchen has the option to assume the manufacturing and supply rights of STENDRA for its territories. Under the license agreement, VIVUS received $70 million. Additionally, Metuchen will be responsible for royalties due to Mitsubishi Tanabe Pharma Corporation based on net sales.

STENDRA is an oral phosphodiesterase type 5 inhibitor. STENDRA was approved by the FDA in April 2012 for the treatment of erectile dysfunction (ED) in the United States and sold under the trade name SPEDRA in the European Union.

"We are excited to announce our commercial collaboration with Metuchen. Metuchen management's strong commercial experience positions them well to take advantage of STENDRA's strong clinical profile within the $3.5 billion erectile dysfunction market. With a 15 minute onset of action, the ability to be taken with food or alcohol and a strong side- effect profile, STENDRA commercialization with Metuchen will optimize the brand's potential," stated Seth H. Z. Fischer, VIVUS CEO. "This collaboration is the first announcement to arise out of the strategic business review process announced earlier this year, and we look forward to providing additional updates in the coming months."

About Avanafil

STENDRA® (avanafil) is approved in the U.S. by the FDA for the treatment of erectile dysfunction. Metuchen Pharmaceuticals LLC has exclusive marketing rights to STENDRA in the U.S., Canada, South America and India.

STENDRA is available through retail and mail order pharmacies.

SPEDRA™, the trade name for avanafil in the EU, is approved by the EMA for the treatment of erectile dysfunction in the EU. VIVUS has granted an exclusive license to the Menarini Group through its subsidiary Berlin-Chemie AG to commercialize and promote SPEDRA for the treatment of erectile dysfunction in over 40 European countries plus Australia and New Zealand.

VIVUS has granted an exclusive license to Sanofi to commercialize avanafil in Africa, the Middle East, Turkey, and the Commonwealth of Independent States (CIS) including Russia.

Avanafil is licensed from Mitsubishi Tanabe Pharma Corporation (MTPC). VIVUS owns worldwide development and commercial rights to avanafil for the treatment of sexual dysfunction, with the exception of certain Asian-Pacific Rim countries. VIVUS is in discussions with other parties for the commercialization rights to its remaining territories.

For more information about STENDRA, please visit www.STENDRA.com.

Important Safety Information

STENDRA® (avanafil) is prescribed to treat erectile dysfunction (ED).

Do not take STENDRA if you take nitrates, often prescribed for chest pain, as this may cause a sudden, unsafe drop in blood pressure.

Discuss your general health status with your healthcare provider to ensure that you are healthy enough to engage in sexual activity. If you experience chest pain, nausea, or any other discomforts during sex, seek immediate medical help.

STENDRA may affect the way other medicines work. Tell your healthcare provider if you take any of the following; medicines called HIV protease inhibitors, such as ritonavir (Norvir®), indinavir (Crixivan®), saquinavir (Fortavase® or Invirase®) or atazanavir (Reyataz®); some types of oral antifungal medicines, such as ketoconazole (Nizoral®), and itraconazole (Sporanox®); or some types of antibiotics, such as clarithromycin (Biaxin®), telithromycin (Ketek®), or erythromycin.

In the rare event of an erection lasting more than 4 hours, seek immediate medical help to avoid long-term injury.

In rare instances, men taking PDE5 inhibitors (oral erectile dysfunction medicines, including STENDRA) reported a sudden decrease or loss of vision. It is not possible to determine whether these events are related directly to these medicines or to other factors. If you experience sudden decrease or loss of vision, stop taking PDE5 inhibitors, including STENDRA, and call a doctor right away.

Sudden decrease or loss of hearing has been rarely reported in people taking PDE5 inhibitors, including STENDRA. It is not possible to determine whether these events are related directly to the PDE5 inhibitors or to other factors. If you experience sudden decrease or loss of hearing, stop taking STENDRA and contact a doctor right away. If you have prostate problems or high blood pressure for which you take medicines called alpha blockers or other anti-hypertensives, your doctor may start you on a lower dose of STENDRA.

Drinking too much alcohol when taking STENDRA may lead to headache, dizziness, and lower blood pressure.

STENDRA in combination with other treatments for ED is not recommended.

STENDRA does not protect against sexually transmitted diseases, including HIV.

The most common side effects of STENDRA are headache, flushing, runny nose and congestion.

Please see full patient prescribing information for STENDRA (50 mg, 100 mg, 200 mg) tablets.

About VIVUS

VIVUS is a biopharmaceutical company commercializing and developing innovative, next-generation therapies to address unmet needs in obesity and sexual health. For more information about the company, please visit www.vivus.com.

Certain statements in this press release are forward-looking within the meaning of the Private Securities Litigation Reform Act of 1995 and are subject to risks, uncertainties and other factors, including risks and uncertainties related to potential change in our business strategy to enhance long-term stockholder value; risks and uncertainties related to the timing, strategy, tactics and success of the commercialization of STENDRA (avanafil) by our sublicensee in the U.S., Canada, South America and India; risks and uncertainties related to our ability to successfully complete on acceptable terms, and on a timely basis, avanafil partnering discussions for territories under our license with MTPC in which we do not have a commercial collaboration; and risks and uncertainties related to our ability to protect our intellectual property and litigation in which we are involved or may become involved. These risks and uncertainties could cause actual results to differ materially from those referred to in these forward-looking statements. The reader is cautioned not to rely on these forward-looking statements. Investors should read the risk factors set forth in VIVUS' Form 10-K for the year ended December 31, 2015 as filed on March 9, 2016 and as amended by the Form 10-K/A filed on April 22, 2016, and periodic reports filed with the Securities and Exchange Commission. VIVUS does not undertake an obligation to update or revise any forward-looking statements.

About Metuchen

Metuchen Pharmaceuticals LLC is a privately- held specialty pharmaceutical company dedicated to improving men's health through innovative proprietary pharmaceutical products that have unique and meaningful clinical benefits.

VIVUS, Inc.

Mark Oki
Chief Financial Officer
oki@vivus.com
650-934-5200

VIVUS Investor Relations:
The Trout Group
Brian Korb
Managing Director
bkorb@troutgroup.com
646-378-2923

EXHIBIT E
LETTER AGREEMENT

EXHIBIT F
QUALITY AGREEMENT

EXHIBIT G
VIVUS PATENTS

- United States Patent Nos. 6,656,935 and 7,501,409
- Canadian Patent Nos. 2,383,466 and 2,420,461

Exhibit 10.4

PURSUANT TO ITEM 601(b)(10) OF REGULATION S-K, CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

COMMERCIAL SUPPLY AGREEMENT

THIS COMMERCIAL SUPPLY AGREEMENT (this "**Agreement**") is dated as of September 30, 2016, by and between VIVUS, Inc., a Delaware corporation with its principal place of business at 351 E. Evelyn Avenue, Mountain View, CA 94041 ("**VIVUS**"), and Metuchen Pharmaceuticals LLC, a limited liability company organized under the laws of Delaware, having its principal place of business at 11 Commerce Drive, 1st Floor, Cranford, New Jersey 07016 ("**Purchaser**"). VIVUS and Purchaser are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, VIVUS and Purchaser have entered into a separate License and Commercialization Agreement (the "**License Agreement**"), effective as of the date of this Agreement, pursuant to which VIVUS granted to Purchaser an exclusive license in the Purchaser Territory for, among other things, the development and commercialization of the therapeutic drug known as Stendra® (avanafil);

WHEREAS, Purchaser desires to purchase the Product from VIVUS, and VIVUS desires to supply the Product to Purchaser, on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms not expressly defined herein shall have the same meaning as set forth in the License Agreement.

"**API**" has the meaning set forth in Section 2.10.

"**Binding Forecast**" has the meaning set forth in Section 2.3.

"**cGMP**" means current Good Manufacturing Practices, that is, the current standards for the manufacture, processing, packing, testing, shipping, and holding of drug active ingredients in the United States, as set forth in the Act and applicable regulations promulgated thereunder (including without limitation 21 C.F.R. Parts 210 and 211), as amended from time to time, and the equivalent laws in the countries of the Purchaser Territory, as applicable, or any other jurisdiction that may be applicable to the conduct of such activities in relation to the Product.

"**Current Inventory**" means VIVUS' inventory of Product on hand as of the Effective Date, as specified on Exhibit D to this Agreement.

"**Effective Date**" means October 1, 2016.

"**Financing Default**" means (a) Purchaser's default under the Financing Documents, or the occurrence of an event of default under the Financing Documents, if such default or event of default gives rise to a right by a Financing Entity to exercise remedies under the Financing Documents, and (b) any of (i) a consensual resolution of such default or event of default whereby Purchaser agrees to assign this Agreement and Purchaser's rights and obligations arising hereunder to a Financing Entity or a Qualified Assignee (with written notice of such resolution provided jointly by Purchaser and such Financing Entity or Qualified Assignee to VIVUS), (ii) the entry of a final, non-appealable order by a court of competent jurisdiction authorizing the sale and/or assignment of this Agreement and Purchaser's rights and obligations arising hereunder to a Financing Entity or a Qualified Assignee, or (iii) the exercise by a Financing Entity of its rights and remedies as a secured creditor in respect of the Debt Facility under the Financing Documents in accordance with applicable law, provided that such Financing Entity provides written notice to VIVUS of such exercise of such rights and remedies.

"**Financing Document**" means any loan, security or other agreement or agreements pursuant to which a Financing Entity provides a Debt Facility to Purchaser.

"**Financing Entity**" means any Person that provides Purchaser with debt financing secured by an assignment of Purchaser's contractual rights under this Agreement as collateral (a "**Debt Facility**") and each successor and assign of such Person's rights in and to such Debt Facility (but excluding any such Person and/or such Person's successors and/or assignees upon the exercise of remedies by such Person pursuant to the related Financing Documents). The Parties acknowledge that (i) Hercules Capital, Inc., as "Agent", and each of the "Lenders" (as such terms are defined in the Loan and Security Agreement dated as of September 30, 2016, by and between Purchaser and Hercules Capital, Inc., as Agent, and the related Loan Documents as defined therein (the "**Hercules Loan Agreements**")), are Financing Entities and (ii) the Hercules Loan Agreements are Financing Documents.

"**Finished Product**" means Product that is fully packaged and labeled in accordance with the FDA-approved NDA (or foreign equivalent, as applicable in the countries of the Purchaser Territory).

"**Forecast**" has the meaning set forth in Section 2.2.

"**GAAP**" means then-current generally accepted accounting principles in the United States, consistently applied during the applicable calculation period by the applicable Party.

"**Initial Period**" means the period beginning on the Effective Date and ending on the fifth (5^{th}) anniversary of the Effective Date.

"**License Agreement**" has the meaning set forth in the recitals above.

"**Manufacturing Cost**" means VIVUS' actual out-of-pocket costs in obtaining, transporting, and storing raw materials for manufacturing Product and in having the Product manufactured, tested, and supplied to Purchaser hereunder, including transfer prices paid to Sanofi and other Third Party manufacturers. The current Manufacturing Cost for Product manufactured by Sanofi shall be as set forth in Exhibit B. The Manufacturing Cost may be adjusted on a periodic basis (at least annually) to reflect variances between actual and estimated costs, and such adjusted Manufacturing Cost shall be calculated based on estimated costs (including, Sanofi's (or any other Third Party manufacturer's) price increases, currency exchange rate fluctuations, yield loss adjustments, and other variables in cost), as determined by VIVUS in good faith and in accordance with its standard procedures. VIVUS will use Commercially Reasonable Efforts to (i) consult with Purchaser prior to the implementation of any non-routine Manufacturing Cost adjustment that is beyond the scope of any cost adjustments contemplated under the relevant supply arrangement between VIVUS and Sanofi, and (ii) provide all relevant supporting documentation detailing any such Manufacturing Cost adjustments.

"**Minimum Purchase Obligation**" means the quantities of Product described in Exhibit C.

"**Permitted Assignment**" has the meaning set forth in Section 16.6.

"**Person**" means an individual, corporation, partnership, limited liability company, trust, association, joint venture, sole proprietorship, unincorporated organization, governmental authority, or any other form of entity not specifically listed herein.

"**Price**" means Manufacturing Cost plus [***] ([***]) to cover VIVUS' internal costs to manage and coordinate the supply chain.

"**Product**" means formulated tablets containing Compound in bulk form which, if appropriately packaged and labeled would constitute the pharmaceutical product known as Stendra®, as described in the FDA-approved NDA for such product (as such NDA may be modified in the future in accordance with this Agreement and/or the License Agreement).

"**Product Recall**" means a recall, product withdrawal, or field correction of any Product or Finished Product.

"**Product Shortage**" means a circumstance, whether or not the result of a force majeure, in which VIVUS is unable to supply Product to Purchaser in compliance with the terms and conditions of this Agreement in the quantities sufficient to meet Purchaser's requirements of Product as set forth in outstanding Purchase Orders and/or the Binding Forecast.

"**Purchase Orders**" has the meaning set forth in Section 2.3.

"**Purchaser Territory**" means the "**Licensee Territory**" as defined in the License Agreement.

"**Qualified Assignee**" means a Person (a) operating in the pharmaceuticals industry that has the financial resources, technological and regulatory expertise, and operational capabilities reasonably required to perform all of Purchaser's obligations under this Agreement, and (b) for which Purchaser (or a Financing Entity or such Person, as applicable) has, at least five (5) Business Days prior to any transfer or assignment of this Agreement in accordance with the terms hereof, provided VIVUS with such information reasonably necessary to determine such Person's resources, expertise, and capabilities to perform under this Agreement.

"**Quality Agreement**" has the meaning set forth in Section 5.4.

"**Renewal Period**" means each successive two-year renewal period beginning upon the expiration of the Initial Period.

"**Sanofi**" means the following affiliated manufacturing entities: (a) for API, Sanofi Chimie and

(b) for bulk tablet of Products, Sanofi Winthrop Industrie.

"**Sharp**" has the meaning set forth in Section 2.5(b).

"**Specifications**" means the specifications, standards, limits, criteria and other requirements for or related to the Product provided hereunder, as set forth in Exhibit A or otherwise agreed to by the Parties in writing.

"**Supply Disruption**" has the meaning set forth in Section 2.8.

"**Term**" has the meaning set forth in Section 9.1.

2. SUPPLY OF PRODUCTS

2.1 **Supply of Product**.

(a) *Supply and Purchase of Product*. During the Term, and subject to the provisions herein, VIVUS shall manufacture, test, and supply the Product to Purchaser or its designee, directly or through one or more Third Party subcontractors. Purchaser shall purchase the Product from VIVUS, and VIVUS shall supply Product to Purchaser, pursuant to Purchase Orders submitted to VIVUS by Purchaser, from time to time in accordance with Section 2.3. VIVUS shall ensure that the Product manufactured by Sanofi on behalf of VIVUS and delivered to Purchaser (other than shipments out of the Current Inventory pursuant to Section 2.5) has a minimum remaining shelf life of not less than eighteen (18) months.

(b) *VIVUS' Third Party Supplier*. Without limiting or modifying any of VIVUS' obligations under this Agreement, Purchaser acknowledges that, as of the Effective Date, VIVUS obtains Product solely from Sanofi and that VIVUS will continue to obtain Product solely from Sanofi unless and until VIVUS, with the assistance and cooperation of Purchaser, is able to qualify with the FDA a Third Party manufacturer with the ability to manufacture Product in accordance with the Specifications, cGMP, and Applicable Law as a manufacturer of Compound and bulk tablets of Product. Purchaser agrees to cooperate and provide any such assistance at VIVUS' reasonable request.

(c) *Exclusive Arrangement*. Subject to the terms and conditions of this Agreement, Purchaser agrees to purchase from VIVUS, and VIVUS agrees to manufacture and provide to Purchaser, all of Purchaser's requirements for Product. VIVUS shall be free to supply Product to any Third Party worldwide, subject to the exclusive rights granted to Purchaser and obligations assumed by VIVUS pursuant to the License Agreement.

2.2 **Forecasts**. Purchaser will submit to VIVUS, no later than the 15th day of the month preceding the start of every calendar quarter (*i.e.*, December 15, March 15, June 15, and September 15) during the Term, a rolling forecast ("**Forecast**") setting forth an estimate of the total quantity of Product that Purchaser reasonably believes it will purchase during the eight (8) calendar quarters commencing with the beginning of the subsequent calendar quarter, along with estimated shipment dates. Such Forecast shall not be binding on either Party except as provided in this Agreement.

2.3 **Purchase Orders**. Purchaser shall purchase Product by written purchase orders ("**Purchase Orders**"), submitted to VIVUS at least [***] in advance of the desired shipment date specified therein. For each calendar quarter, Purchaser shall be required to submit Purchase Orders for at least [***] of the quantities in the Forecast for such calendar quarter submitted by Purchaser to VIVUS [***] months prior to the start of such calendar quarter (the "**Binding Forecast**"), and VIVUS will have no obligation to supply Product in excess of [***] ([***]) of the quantity specified in such Binding Forecast, but will use Commercially Reasonable Efforts to supply such excess Product. Each Purchase Order shall specify, at a minimum, the applicable volume of each dosage strength of Product ordered, and the requested delivery date. Upon receipt of a Purchase Order, subject to the provisions of Section 2.1, VIVUS shall supply the Product in such quantities and deliver the Product to Purchaser (or Purchaser's designee) on such delivery dates. VIVUS is not obligated to accept verbal orders of any kind for the supply of Product hereunder. To the extent there is any conflict or inconsistency between this Agreement and any Purchase Order, this Agreement shall govern. If a new Third Party manufacturer has been appointed by VIVUS, then the lead times (*i.e.* the time between the finalizing of a Purchase Order and the delivery of the Product) for Purchase Orders set forth above may not be lengthened without the prior written consent of Purchaser, not to be unreasonably withheld, conditioned, or delayed.

2.4 **Minimum Purchase Requirements**. For 2016 and for each subsequent calendar year during the Term, Purchaser shall be required to either (a) purchase no less than the Minimum Purchase Obligation from VIVUS in accordance with the terms of this Agreement or (b) reimburse VIVUS, in cash, for the shortfall as it relates to VIVUS' out of pocket cost to acquire the API to manufacture the bulk Product subject to such Minimum Purchase Obligation. For clarity, upon any termination of this Agreement other than by Purchaser under Section 9.2(a) or pursuant to Section 9.4, Purchaser's obligations under Section 2.4 shall accelerate for the entire then-current Initial Period or Renewal Period, as applicable, and become due, and Purchaser shall be required to pay VIVUS, in cash, an amount equal to VIVUS' anticipated out of pocket cost to acquire such quantities of API as that which correspond to the Purchaser's Minimum Purchase Obligations for the entire then-current Initial Period or Renewal Period, as applicable. VIVUS acknowledges and agrees that VIVUS' sole remedy for Purchaser's failure to meet its Minimum Purchase Obligation is set forth in this Section 2.4 and that the Minimum Purchase Obligation is not a guarantee by Purchaser that any specific sales level will be obtained with respect to the Product. With respect to the minimum purchase requirements for 2016 only, any quantities of bulk Product purchased in excess of the Minimum Purchase Obligation for 2016 shall be credited against the Minimum Purchase Obligation for 2017 as set forth in Exhibit C. Purchaser's orders of Current Inventory (including the order made pursuant to Section 2.5(b) below) shall not be counted towards the satisfaction of the Minimum Purchase Obligation.

2.5 **Initial Shipments of Product**.

(a) The Current Inventory of Product is, as of the Effective Date, being stored at Sharp Corporation ("**Sharp**") at 7451 Keebler Way, Allentown, PA 18106. Upon payment in full to VIVUS of the lesser of (i) the aggregate Manufacturing Cost for the full quantities of Product in the Current Inventory and (ii) [***], VIVUS shall transfer to Purchaser ownership of the Current Inventory, in accordance with this Section 2.5.

(b) Purchaser hereby submits a binding order for the full quantities of the Current Inventory. As set forth in Section 3.1, the transfer price for the quantities of Product ordered pursuant to this Section 2.5(b) shall be the Price. Upon payment in full to VIVUS of the Price for the full quantities of Product in the Current Inventory, Current Inventory will be sold to Purchaser EXW (Incoterms 2010) Sharp's facilities and title to such quantities of Product shall automatically pass to Purchaser.

(c) For all Product transferred to Purchaser under this Section 2.5, Purchaser shall be responsible, at Purchaser's sole cost, for transport and distribution of such Product. Purchaser may use any Third Party that it designates for Product packaging, but Purchaser shall be responsible for the cost of validation if the packager is any Third Party other than Sharp, as well as any costs associated with transporting Product to such other packager. VIVUS shall ensure that all Current Inventory delivered to Purchaser under this Agreement has a minimum remaining shelf life of not less than eighteen (18) months.

2.6 **Delivery and Shipping Terms**. Product supplied hereunder shall be shipped EXW (Incoterms 2010) Sanofi's manufacturing facility (or, if applicable, the manufacturing facility of any other manufacturer being utilized by VIVUS for manufacturing Product) directly to the packaging facility or other location designated by Purchaser. Title to the Product and risk of loss shall pass to Purchaser at the time of delivery of the Product to the Third Party shipper at the loading dock of the manufacturing facility. Purchaser shall arrange for all shipping, insurance freight, custom duties, and other charges associated with, the shipment, and the cost of the foregoing will be paid by Purchaser. VIVUS shall issue (or shall have its manufacturer issue) to Purchaser in advance of shipment a Certificate of Analysis (each, a "**COA**") and Certificate of Compliance (each, a "**COC**") for each shipment of Product (including Current Inventory) delivered to Purchaser. Each COA shall be accompanied by batch documentation for each lot of delivered Product and shall certify that the Product conforms to the Specifications, this Agreement, and the Quality Agreement along with the results of such analysis and any supporting data. Purchaser will be under no obligation to accept any shipment of Product for which VIVUS has not provided a COA and/or COC or which Purchaser reasonably believes does not comply with the COA or COC at the time the Product was delivered to Purchaser. VIVUS will be responsible for any out-of-pocket costs incurred by Purchaser with respect to the storage, shipment, return, or at VIVUS' direction, destruction, of such non-conforming shipment.

2.7 **Packaging and Labeling**. VIVUS will supply Product to Purchaser in the form of bulk tablets. Purchaser shall be responsible, at its sole expense, for packaging and labeling the Product for commercial sale. Any labels, product inserts, and other packaging for the Product shall be consistent with then-current approved NDA for the Product and with Applicable Law. VIVUS' name will not appear on the label or anywhere else on the commercial packaging of the Product unless: (a) required by any Applicable Laws; (b) VIVUS consents in writing to the use of its name; or (c) such Product is in the Current Inventory.

2.8 **Supply Disruption**. If VIVUS is unable to supply confirmed orders to Purchaser with respect to the quantity or the delivery date (a "**Supply Disruption**"), or if VIVUS believes that a Supply Disruption is reasonably likely to occur based on Purchaser's confirmed and/or forecasted orders, VIVUS shall provide Purchaser with prompt written notice of such inability or belief. In the event of a Supply Disruption, VIVUS shall be obliged to allocate the available Product among Purchaser and any other licensees and/or authorized distributors of Product worldwide, proportionally based on the volume of Product orders of Purchaser and such other licensees and distributors. The "volume of Product orders" will be calculated based on (a) orders for Product that were delivered during the preceding six (6) months or that are then in transit (excluding in each case any orders where payment therefor is delinquent), and (b) the binding portion of any outstanding purchase orders or forecasts. In the event of a Supply Disruption, notwithstanding Section 2.1(c), Purchaser shall be permitted to obtain from another source the quantities of Product that VIVUS is unable to supply. In the absence of gross negligence or willful misconduct, this Section 2.8 describes Purchaser's sole and exclusive remedy, and VIVUS' sole and exclusive liability, for any Supply Disruption; provided, that if VIVUS actually recovers direct contract damages from its Third Party manufacturer or supplier in connection with a Supply Disruption, VIVUS shall pass through to Purchaser its allocable portion (which shall be calculated and allocated proportionally based on the volume of Product orders of Purchaser and such other licensees and distributors, as described above in this Section 2.8) of such recovery amount. In the event of any Supply Disruption that results in more than twenty-five percent (25%) of ordered Product in any four (4) month period arriving at the delivery location more than (60) days after the intended delivery date, Purchaser shall be relieved of any further obligation during the then-current calendar year to purchase the Minimum Purchase Obligation for such calendar year; provided that to the extent any such Supply Disruption results in the delivery of any such quantity of Product after December 31st of the relevant calendar year, such late-delivered quantities shall be credited against the Minimum Purchase Obligation of the immediately following calendar year. In the event a Supply Disruption affects the quantities of Product available for Commercialization in a subsequent year, the Parties will meet and negotiate in good faith a possible reduction of the Minimum Purchase Obligation for such subsequent year, which reduction shall take into account (i) the reasonably likely commercial effect of the Supply Disruption and (ii) VIVUS' respective minimum purchase obligations under any arrangements or agreements with any Third Parties (including Sanofi).

2.9 **Post-Delivery Handling and Release**. After delivery of the Product to Purchaser in accordance with the terms of this Agreement and the Quality Agreement, any handling, storage, quality control, quality assurance, and the release of the Product shall be the sole responsibility of Purchaser or its designated Third Party.

2.10 **Stability Testing**. VIVUS shall be responsible for conducting all stability testing required under the NDA with respect to the active pharmaceutical ingredient in the Compound ("**API**") and the bulk Product, and Purchaser shall be responsible for conducting such stability testing with respect to the Finished Product. VIVUS shall, at Purchaser's reasonable request and expense, use Commercially Reasonable Efforts to (a) make relevant VIVUS personnel available for consultation during normal business hours and (b) provide underlying documentation, in each case (a) and (b), for analytical methods transfer, including supply of API standard and impurities per Product specification.

2.11 **Technology Transfer**.

(a) *Cooperation*. Upon (i) termination of this Agreement by Purchaser as a result of VIVUS' uncured material breach, (ii) in the event of a Supply Disruption, (iii) upon mutual agreement of the Parties on a Supply Chain Transfer Plan in accordance with Section 6.2 of the License Agreement, (iv) in the event that VIVUS provides a notice to Purchaser under Section 2.8, (v) upon an event of Force Majeure preventing the timely supply of Product hereunder for a period anticipated to exceed ninety (90) days, or (vi) upon a breach by VIVUS which permits Purchaser to terminate this Agreement, VIVUS shall provide Purchaser with such assistance and any VIVUS Know-How Controlled by VIVUS, as reasonably necessary for manufacturing, formulating and/or packaging of the Product, as the case may be (a "**Technology Transfer**"). In connection with the foregoing, Purchaser shall be permitted to consult with VIVUS' technical personnel on the specified manufacturing activities and, to the extent necessary, VIVUS shall use Commercially Reasonable Efforts to permit Purchaser to consult with VIVUS' Third Party manufacturers. Purchaser, in its sole discretion, shall choose whether to exercise its rights in connection with a Technology Transfer.

(b) *Manufacturing Rights*. Notwithstanding any Technology Transfer pursuant to Section 2.11(a), Purchaser's right to manufacture or have manufactured Product shall be limited to the rights described in Section 2.2 of the License Agreement, plus the additional manufacturing rights described in Section 2.8 in connection with a Supply Disruption.

(c) *Technology Transfer Costs*. In connection with a Technology Transfer pursuant to Section 2.11(a)(iii), Purchaser shall be responsible for paying VIVUS' actual costs and expenses incurred in connection with such Technology Transfer, including FTE costs, out-of-pocket expenses and any technology transfer fees payable to any other Third Party; provided, however, VIVUS shall bear all costs related to any Method Transfer and any other transfer costs, for which the related work has been performed prior to the Effective Date (collectively, "**Technology Transfer Costs**"). In connection with a Technology Transfer pursuant to Section 2.11(a)(i), (ii), or (v), VIVUS shall be responsible for the Technology Transfer Costs. In connection with a Technology Transfer pursuant to Section 2.11(a)(iv), Purchaser shall be responsible for the Technology Transfer Costs unless and until a Supply Disruption shall have occurred, in which event VIVUS shall be responsible for such Technology Transfer Costs, including reimbursing Purchaser for those already paid by Purchaser.

2.12 **Notice Right; Step-In Right**. VIVUS shall provide Purchaser with prompt written notice of any breach or alleged breach, including without limitation any notice of such breach or alleged breach provided by any Third Party manufacturer of API or bulk Product and shall provide Purchaser with copies of any documentation and correspondence between any Third Party manufacturer and VIVUS regarding such breach including written summaries of any oral discussions. In the event that VIVUS is in breach of any such manufacturing or supply agreement with a Third Party manufacturer, it shall promptly provide to Purchaser a written plan of action to remedy or cure such breach and shall keep Purchaser promptly informed of its progress or any changes to such plan of action. If VIVUS is unable to cure such breach, then, unless VIVUS is disputing such breach in good faith, at Purchaser's election VIVUS shall use Commercially Reasonable Efforts to cause such Third Party manufacturer to permit Purchaser to step-in and cure the breach. VIVUS may condition disclosure of attorney-client privileged information or attorney work product on the Parties' execution of a joint defense agreement, common interest agreement, or similar agreement intended to preserve attorney-client and attorney work product privileges under Applicable Law, in a form reasonably acceptable to VIVUS.

2.13 **Adjustments Related to Third Party Manufacturers**. VIVUS will not at any time during the Term take any action that could reasonably be expected to result in a breach of any agreement between VIVUS and any Third Party manufacturer or supplier. VIVUS shall provide Purchaser with advance written notice of any material amendment, waiver of rights, termination or modification of any agreement between VIVUS and any Third Party manufacturer or supplier, and VIVUS will not agree to any amendment, waiver of rights, termination or modification of any agreement between VIVUS and any Third Party manufacturer or supplier that (a) that would reasonably be expected to result in (i) any non-routine increase in the Price, (ii) any early termination of this Agreement, or (iii) any increase in the Purchaser's Minimum Purchase Obligations or (b) has, or would reasonably be expected to have, any other material negative effect on Purchaser, in each case (a) and (b), without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned, or delayed.

2.14 **API Purchase Option**. If VIVUS obtains the right to satisfy its minimum purchase obligations under all relevant manufacturing and/or supply agreements with Sanofi and/or any other relevant Third Party manufacturer (as applicable) by purchasing a combination of API and Product in lieu of solely Product from Sanofi and/or such other relevant Third Party manufacturer (as applicable), then the Parties shall discuss in good faith an option for Purchaser to fulfill its obligations under this Agreement by purchasing API in lieu of or in addition to Product, and possible adjustments or supplements to this Agreement to provide for the supply of API on comparable terms and conditions as for the supply of Product contained herein, including (a) a price for API and quantities for the API minimum purchase obligations, which appropriately take into account both purchases of Product and API, and (b) revisions to Section 4.2 and ARTICLE 5 to reflect, on a basis substantially comparable to the provisions set forth herein, that Purchaser will be buying and VIVUS shall be supplying API in lieu of or in addition to Product. VIVUS shall use Commercially Reasonable Efforts to negotiate in good faith with Sanofi or any other Third Party manufacturer, as applicable, to obtain the rights to satisfy its minimum purchase obligations by purchasing a combination of API and Product.

3. PRICE; PAYMENT

3.1 **Prices for Product**. Purchaser shall pay to VIVUS the Price for the units of Product supplied to Purchaser pursuant to this Agreement. Purchaser shall be solely responsible for determining the price at which it will re-sell the Product.

3.2 **Payment**. VIVUS shall provide to Purchaser written invoices setting forth the amount payable by Purchaser with respect to quantities of Product sold hereunder, including the Price applied by VIVUS to each dosage strength of Product. Purchaser shall pay VIVUS for Product in the amount invoiced by VIVUS within thirty (30) days from the date of invoice, which invoice shall be issued at the delivery date. If Purchaser is legally required to withhold any Taxes from payments due hereunder, Purchaser shall (a) deduct such Taxes from the payment made to VIVUS, and (b) timely pay the taxes to the proper taxing authority. Each Party agrees to cooperate with the other Party in claiming exemptions from such deductions or withholdings under any agreement or treaty from time to time in effect and shall discuss in good faith how to solve any situation where VIVUS may not deduct such payment for reasons beyond VIVUS' reasonable control. Solely for purposes of this Section, "**Taxes**" means any present or future taxes, levies, imposts, duties, charges, assessments or fees of any nature (including interest, penalties and additions thereto) that are imposed by the applicable government or other taxing authority.

3.3 **Records; Audit**. VIVUS shall maintain complete and accurate books and records in accordance with GAAP in sufficient detail to permit Purchaser to confirm the accuracy of the Manufacturing Costs, and any other financial measure relating to the Price of the Product payable under this Agreement, for a period of five (5) years from the creation of individual records or any longer period required by Applicable Law. At Purchaser's request, such records shall be available for review at a Purchaser's headquarters located at 11 Commerce Drive, 1st Floor, Cranford, New Jersey 07016, or a mutually agreeable location determined by Parties not more than once each calendar year (during normal business hours on a mutually agreed date with reasonable advance notice) by an independent Third Party auditor selected by Purchaser and approved by VIVUS (such approval not to be unreasonably withheld, conditioned, or delayed) and subject to confidentiality and non-use obligations no less stringent than those set forth in Article 11 of the License Agreement for the sole purpose of verifying for Purchaser the accuracy of the Manufacturing Costs and Price paid by Purchaser pursuant to this Agreement or of any payments made by Purchaser to VIVUS pursuant to this Agreement. Any such auditor shall not disclose VIVUS' Confidential Information to Purchaser, except to the extent such disclosure is necessary to verify the accuracy of the financial reports furnished by VIVUS or the amount of payments due by VIVUS under this Agreement. Any undisputed amounts finally determined to be owed but unpaid shall be paid within thirty (30) days from the accountant's report. Any amounts finally determined to have been overpaid will either be refunded to Purchaser or credited to Purchaser against future payments to VIVUS hereunder, at Purchaser's option. Purchaser shall bear the full cost of such audit unless such audit reveals an underpayment or under-reporting error of ten percent (10%) or more during the applicable audit period, in which case VIVUS shall bear the full cost of such audit.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS

4.1 **Mutual Representations and Warranties**. Each Party hereby represents, warrants, and covenants (as applicable) to the other Party as follows, as of the Effective Date:

(a) *Corporate Existence and Power*. It is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated, and has all requisite power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as contemplated in this Agreement.

(b) *Authority and Binding Agreement*. It has the requisite power and authority and the legal right to enter into this Agreement and perform its obligations hereunder; it has taken all necessary action on its part required to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; and this Agreement has been duly executed and delivered on its behalf, and constitutes a legal, valid, and binding obligation of such Party that is enforceable against it in accordance with its terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

(c) *Consents*. All necessary consents, approvals and authorizations of all governmental authorities and other Third Parties required to be obtained by it in connection with the execution, delivery and performance of this Agreement have been obtained by it. For the avoidance of doubt, Purchaser shall be solely responsible for obtaining any product and/or distribution license from the applicable Governmental Authority so as to be able to sell and market the Product in a particular jurisdiction.

4.2 **Product Representations and Warranties of VIVUS**.

(a) *Compliance*. VIVUS warrants that it will ensure that all Product will be manufactured and tested in conformity with this Agreement, the License Agreement, cGMP, the Specifications, and the Quality Agreement.

(b) *Conformity with Specifications*. VIVUS warrants that it will and will cause its Third Party suppliers to ensure that all Product manufactured by or on behalf of VIVUS and sold to Purchaser pursuant to this Agreement will at the time of delivery to the common carrier for such Product (i) meet the Specifications, (ii) not be misbranded or adulterated and (iii) will be in compliance with all Applicable Laws.

(c) *No Liens*. VIVUS warrants that all Product delivered to Purchaser pursuant to this Agreement will, at the time of such delivery, be free and clear of all liens, encumbrances, security interests and other encumbrances. VIVUS' obligations as provided in Section 10.1 and Section 6.2 shall be the sole and exclusive remedies available to Purchaser with respect to Product that fails to meet the product warranties set forth in Section 4.2.

4.3 **Other Representations and Warranties of VIVUS**.

(a) *Performance*. VIVUS will perform its obligations under this Agreement, and will use Commercially Reasonable Efforts to cause any Third Party supplier to perform their manufacturing obligations with respect to the Product, in a professional manner with requisite skill, care and diligence and in accordance with the industry standards. VIVUS will maintain, and will use Commercially Reasonable Efforts to cause its Third Party suppliers to maintain, appropriately qualified and trained personnel, adequate premises and space, suitable equipment, correct materials, containers and labels, suitable storage and the knowledge and experience to carry out satisfactorily the work ordered by Purchaser.

(b) *Compliance with Applicable Laws*. During the Term of this Agreement, VIVUS will comply with, and will use Commercially Reasonable Efforts to cause its Third Party suppliers to comply with, all Applicable Laws to the conduct of its business and manufacture of Product in the performance of this Agreement and will hold, or will cause its Third Party manufacturers to hold, all permits and authorizations necessary to fulfill its obligations under this Agreement.

(c) *Compliance with Certain Agreements*. VIVUS is in compliance in all material respects with, and will at all times remain in compliance in all material respects with, and has not received any notice of breach pursuant to any agreement relating to the manufacture of Product. To the Knowledge of VIVUS, as of the Effective Date, (i) Sanofi is not in breach of the Manufacturing and Supply Agreement, and (ii) Sanofi is in compliance with such agreement in all material respects.

(d) *Debarment*. VIVUS represents and warrants that it has not been debarred, nor is it under consideration to be debarred, and that it will not knowingly use in any capacity in connection with the manufacturing or services hereunder any person (including Third Party manufacturers) who has been debarred, nor is under consideration to be debarred by the FDA and/or TPD, the subject of a pending debarment pursuant to the Act, or who is the subject of a conviction described in such section. VIVUS will inform Purchaser in writing immediately upon becoming aware thereof if it or any person (including Third Party manufacturers) who is performing manufacturing or any services hereunder is debarred or is the subject of a conviction described in section 306 of the Act, or if any action, suit, claim, investigation, or proceeding is pending, or to the best of VIVUS' knowledge, is threatened, relating to the debarment or conviction of VIVUS, or any person performing manufacturing or services pursuant to this Agreement.

4.4 **Covenants of Purchaser.** Purchaser hereby covenants not to sue the VIVUS Indemnified Parties (as defined in Section 10.2 hereof), and shall defend, indemnify and hold harmless the VIVUS Indemnified Parties from and against any and all Losses incurred by the VIVUS Indemnified Parties, for any such VIVUS Indemnified Parties' compliance with any Financing Entity's notice of its exercise of rights and remedies under the Financing Documents in connection with any Financing Default (including during the pendency of any dispute between Purchaser and the Financing Entity relating to or arising under the Financing Documents, provided that the Financing Entity provides written notice to VIVUS of such exercise of such rights and remedies).

4.5 **No Other Representations or Warranties**. EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 4 OR THE LICENSE AGREEMENT, NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR NON-MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, ARE MADE OR GIVEN BY OR ON BEHALF OF VIVUS. ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, ARE HEREBY EXPRESSLY EXCLUDED.

5. QUALITY

5.1 **General**. VIVUS shall be responsible for establishing and maintaining such procedures for implementing corrective and preventive actions with respect to the manufacturing of the Product as required by Applicable Law, cGMP, and the Quality Agreement. VIVUS shall cooperate with Purchaser at VIVUS' expense in determining the cause of any quality problems involving the Product, identifying corrective actions, and ensuring the implementation and effectiveness thereof VIVUS shall implement such corrective actions with respect to the Product, and shall provide Purchaser with written confirmation upon the completion thereof.

5.2 **Notice of Failure to Meet Specifications**. Each Party shall notify the other Party immediately after the discovery that any lot of Product sold to Purchaser failed to comply with its applicable Specifications at the time of delivery or was not manufactured in accordance with Applicable Laws, including without limitation cGMP. VIVUS will immediately make, at its sole expense, such further internal investigation of any failure to meet these requirements as is reasonable under the circumstances and otherwise consistent with its obligations hereunder and shall use its best efforts to remediate such failure, which shall include the replacement of the quantity of non-conforming Product at no cost to Purchaser, as promptly as reasonably practicable.

5.3 **Changes to Specifications**.

(a) *Changes Requested by Purchaser*. VIVUS will not be required to implement any requests by Purchaser to change the manufacturing process, Specifications, or any testing method with respect to the Product, but VIVUS shall consider any such requests in good faith.

(b) *Changes Requested by VIVUS*. VIVUS will provide Purchaser with advance notice of any material changes to procedures, Specifications, methods (including testing methods) or standard operating procedures relating to the manufacture or supply of the Product and VIVUS will not make or permit any such changes without the prior written consent of Purchaser if such change is (i) inconsistent with the then-current approved NDA for the Product, (ii) reasonably likely to have a material adverse effect on VIVUS' ability to comply with the terms of this Agreement, including any Product delivery timelines hereunder, or (iii) otherwise reasonably likely to have an adverse impact on the Commercialization of the Product in the Purchaser Territory.

(c) *Changes Required by Applicable Law*. VIVUS will promptly, at its own expense, implement any changes to any procedures, Specifications, methods (including testing methods) or standard operating procedures relating to the manufacture or supply of the Product required by Applicable Law or the NDA (collectively, "**Required Manufacturing Changes**"); provided that Purchaser shall be responsible for any and all expenses arising from any such changes required by any changes to the NDA submitted to any Regulatory Authority by the Purchaser without VIVUS' prior written consent.

(d) *Cost of Manufacturing Changes*. Prior to a Supply Chain Transfer, VIVUS will be solely responsible for all internal and external costs, including, without limitation, obsolete raw materials, regulatory filings, work-in-process, and Product, (i) associated with Required Manufacturing Changes, and (ii) all costs associated with any other manufacturing changes not requested by Purchaser. Prior to a Supply Chain Transfer, Purchaser shall be responsible for such costs only in the event such manufacturing change is requested by Purchaser and is not otherwise required by Applicable Law or the NDA; provided that Purchaser shall also be responsible for any and all expenses arising from any such changes required by any changes to the NDA submitted to any Regulatory Authority by the Purchaser without VIVUS' prior written consent.

5.4 **Quality Agreement**. Concurrent with the execution of this Agreement, the Parties have entered into a separate quality agreement governing the agreed-upon Specifications and other technical aspects of supply of Products to Purchaser hereunder (the "**Quality Agreement**"). In the event of any inconsistency between this Agreement and the Quality Agreement, this Agreement shall control, except with respect to quality assurance matters. VIVUS agrees to use its Commercially Reasonable Efforts to have three-way quality agreements put into place with Purchaser and VIVUS' Third Party manufacturers.

6. ACCEPTANCE AND REJECTION PROCEDURES

6.1 **Inspection**. Purchaser or its designee shall promptly, upon arrival on its site, carefully inspect each shipment of Product for transport damages, losses and shortfalls. Apparent defects, such as, for instance, damaged containers or missing packages of Product, must be notified to the carrier promptly upon arrival of the shipment and the freight documents at Purchaser or its designee and, where possible, countersigned by the carrier's representative. Failure of Purchaser or its designee to notify such visually detectable defects to the carrier promptly upon arrival of the concerned shipment and freight documents shall exclude any liability of VIVUS for such defects. Purchaser shall have twenty-five (25) days after receipt of a shipment of Product to determine if there is any defect in the Product or any non-compliance with the Specifications or Applicable Law, including without limitation cGMP, which is discoverable by diligent and customary inspection of the shipment and any accompanying documentation (the "**Inspection Period**"). Purchaser shall notify VIVUS of any such non-compliance prior to the end of the Inspection Period, describing in reasonable detail the non-compliance. Notwithstanding the preceding provisions of this Section 6.1, if with respect to any unexpired Product, the non-compliance could not reasonably be expected to have been found by diligent and customary inspection during the Inspection Period and Purchaser notifies VIVUS of such non-compliance, describing such Latent Defect in detail, within fifteen (15) days of Purchaser's knowledge of the Latent Defect and within the shelf life of the Product, such non-compliance shall be deemed to be a "**Latent Defect**" hereunder. Purchaser's notification of VIVUS of a non-compliance during the Inspection Period or of a Latent Defect as permitted above shall be referred to herein as a "**Claim**". For the sole purpose of application of Section 6.2, Purchaser shall be deemed to have accepted any Product if it fails to give a Claim in the periods permitted above; provided, however, that Purchaser's acceptance of Product shall not limit Purchaser's indemnification rights under Section 10.1 (which, for clarity, shall be fully subject to the exceptions recited therein). At VIVUS' reasonable request, Purchaser shall provide VIVUS with any available documentation or analysis that is reasonably necessary for VIVUS to exercise its rejection rights under its supply agreement with Sanofi and/or any other relevant Third Party manufacturer.

6.2 **Remedies**. Except for Claims disputed pursuant to Section 6.2(b) hereof, if Purchaser submits a Claim, then as promptly as practicable after the submission of the Claim to VIVUS (but in no event later than thirty (30) days after the submission of the Claim), VIVUS shall instruct Purchaser whether to return or destroy the Product in question and provide Purchaser with replacement Product. In the event that:

(a) VIVUS agrees with the Claim, then VIVUS shall pay for all out-of-pocket costs of returning or destroying Product that is the subject of any accepted Claim. VIVUS shall bear the risk of loss for such Product, beginning at such time as such Product is taken at Purchaser's premises for return delivery. VIVUS shall replace all nonconforming Product as promptly as reasonably practicable and at no cost to Purchaser.

(b) VIVUS does not agree with the Claim, then the Parties agree to submit the Product in question to a mutually agreed independent Third Party that has the capability of testing the Product to determine whether or not it complies with the Quality Agreement, the Specifications and Applicable Law, including cGMP. The losing Party shall bear all costs and expenses related to such testing and pay for all shipping costs of returning the Product and/or sending the replacement Product, as the case may be.

6.3 **Cost of Product Recalls**. With respect to any Product supplied hereunder, VIVUS shall bear all Losses (including without limitation expenses related to communications and meetings with all required regulatory agencies, expenses of replacement stock, the cost of notifying customers and costs associated with shipment of recalled Product from customers and shipment of an equal amount of replacement Product to those customers) related to any Product Recall in the event that such Product Recall is caused by or results from (a) the breach by VIVUS (including indirectly by any Third Party manufacturer) of any representation or warranty or covenant contained in this Agreement or the License Agreement, or (b) VIVUS' negligence or willful misconduct. Additionally, in the event the Product Recall is caused by or results from (a) or (b) above, VIVUS shall replace the units of recalled Products as promptly as practicable and at no cost to Purchaser. Except as provided above, Purchaser shall bear all Losses related to any Product Recall.

7. REGULATORY MATTERS.

7.1 **Regulatory Responsibilities**. The Parties' respective rights and obligations with respect to Regulatory Approvals in the Purchaser Territory, communications with Regulatory Authorities in the Purchaser Territory, and other regulatory matters relating to the Product in the Purchaser Territory are set forth in the License Agreement.

8. RECORD-KEEPING; AUDITS

8.1 **Recordkeeping**. VIVUS (and/or Sanofi or any other Third Party manufacturer) will keep complete and accurate records of the manufacture and testing of Product, and retain samples of bulk Product and the active pharmaceutical ingredient in the Compound as are necessary to comply with Applicable Laws, as well as to assist with resolving Product complaints and other similar investigations. Copies of the records and samples will be retained for a period of one (1) year following the date of Product expiry, or longer if required by Applicable Laws. Purchaser is responsible for retaining samples of the fully packaged Product necessary to comply with the legal/regulatory requirements applicable to Purchaser.

8.2 **Audits**.

(a) *Audit Right; Facility Access*. From and after the commencement of supply hereunder directly or through an independent auditor reasonably acceptable to VIVUS, Purchaser shall have the right, upon reasonable advance notice and during regular business hours, to make an annual inspection and audit of the facilities being used by VIVUS or a VIVUS Affiliate for the production, storage, or testing of Product to assure compliance by or on behalf of VIVUS with cGMPs, the Specifications, and Applicable Law. At Purchaser's reasonable request, VIVUS agrees to use Commercially Reasonable Efforts to facilitate a similar inspection and audit of the facilities being used by Sanofi and/or any other Third Party manufacturer, such as, solely by way of example, by exercising VIVUS' audit right in its agreement with such manufacturer, at Purchaser's cost, and permitting Purchaser or its designee to attend such audit (subject to approval by the Third Party manufacturer to allow such attendance, which VIVUS shall use Commercially Reasonable Efforts to obtain) and in any event sharing the results of such audit with Purchaser.

(b) *Third Party Audits*. Without limiting VIVUS' obligations under this Agreement in any respect, Purchaser acknowledges that VIVUS' audit rights in its manufacturing and supply agreements with Sanofi are limited to periodic audits to ensure that cGMPs continue to be followed. In the event that VIVUS or any Third Party licensee of VIVUS outside the Purchaser Territory proposes to conduct or conducts an audit of the facilities used by or on behalf of VIVUS or a VIVUS Affiliate or Third Party for the production, storage, or testing of Product to be sold to Purchaser under this Agreement, then VIVUS will provide immediate notice to Purchaser of such audit and VIVUS shall use its Commercially Reasonable Efforts to permit Purchaser to be able to be present for and participate in such audit.

(c) *Procedure*. The inspection and audit provided for under Section 8.2(a) shall not be carried out by Purchaser more than once per calendar year, but such inspection and audit shall not preclude Purchaser from conducting any "for cause" inspection or audit permitted under the Quality Agreement or otherwise for cause. Each inspection and audit shall be conducted in a manner so as to minimize disruption of the business operations of VIVUS, Sanofi and/or any other Third Party manufacturer. VIVUS representatives will be permitted to participate as observers during any such inspection and audit. To the extent that Purchaser requests an inspection or audit of the facilities of Sanofi and/or any other Third Party manufacturer, Purchaser acknowledges that VIVUS must coordinate the dates and schedule of such inspection and audit with Sanofi and/or such other Third Party manufacturer. The independent auditor, if any, shall enter into a written confidentiality agreement with VIVUS containing provisions regarding the disclosure of information obtained during the inspection and audit that are at least as restrictive as the provisions of Article 13 of this Agreement; provided that, the independent auditor will be permitted to disclose to Purchaser whether and to what extent VIVUS (or, if applicable, Sanofi and/or any other Third Party manufacturer) failed to comply with the requirements of Section 8.1 (and shall not be permitted to disclose to Purchaser any other information). A copy of any such disclosure to Purchaser shall also be provided to VIVUS.

(d) *Results*. If an inspection or audit reveals a failure to comply with cGMP or Applicable Law in any material respect, then Purchaser shall promptly provide to VIVUS written notice of such fact, which notice shall contain in reasonable detail the deficiencies found in the applicable facilities and, if practicable, those steps Purchaser believes should be undertaken in order to remedy such deficiencies. The Parties shall discuss in good faith the deficiencies and VIVUS shall, at its own expense, use its best efforts to remedy such deficiencies, or implement a plan to remedy such deficiencies, as soon as reasonably practical following receipt of the notification thereof. In addition to the audit rights set forth in this Section 8.2, Purchaser will be entitled to perform reasonable follow-up inspections to monitor correction of such deficiencies or the circumstances giving rise to such deficiency, failure or notice.

8.3 **Analytical Method Transfer**. Upon the reasonable prior written request of Purchaser, VIVUS agrees to provide Purchaser or use Commercially Reasonable Efforts to cause its Third Party designee hereunder to provide Purchaser with all required documentation and support for analytical method transfer for the Product in order to enable Purchaser to analyze the Product in order to determine its suitability and stability under this Agreement and according to all applicable requirements of Regulatory Authorities or to ensure that the Products are in line with the Regulatory Approvals (a "**Method Transfer**"). VIVUS agrees to actively participate, or use Commercially Reasonable Efforts to cause its Third Party designee hereunder to participate, in such Method Transfer by, among other things, providing samples and conducting parallel testing. Purchaser shall pay for any out-of-pocket costs incurred by VIVUS in connection with such Method Transfer, except in connection with the first Method Transfer to establish stability testing.

8.4 **Regulatory Compliance**. VIVUS will advise Purchaser promptly if an authorized agent of a Regulatory Authority visits its facilities (or, to its knowledge, its Third Party designee's manufacturing facilities) where the API or the Product is being manufactured, stored, or tested. VIVUS will provide Purchaser with all material information in VIVUS' possession pertaining to actions taken by Regulatory Authorities (including any inspections, proposed regulatory actions, investigations or requests for information or a meeting by any Regulatory Authority) whether inside the Purchaser Territory or outside the Purchaser Territory in connection with the API or the Product in the Field, including any notice, audit notice, notice of initiation by Regulatory Authorities of investigations, inspections, detentions, seizures or injunctions concerning the API or the Product in the Field whether inside the Purchaser Territory or outside the Purchaser Territory, notice of violation letter (*i.e.*, an untitled letter), warning letter, service of process or other inquiry; provided, however, that VIVUS shall be entitled to redact those portions thereof to the extent not related to the API or the Product in the Field or to the extent disclosing Third Party confidential information. Without limiting the generality of the foregoing, each Party shall promptly, but in any event within two (2) Business Days, inform the other Party of any material inspections, proposed regulatory actions, investigations or requests for information or a meeting by any Regulatory Authority with respect to the API or the Product in the Field in the Manufacturing Territory. VIVUS or its Third Party designee will furnish to Purchaser all material information supplied to, or supplied by, any Regulatory Authority in the Manufacturing Territory, including the Form 483 observations and responses, to the extent that such information relates to the API or the Product or the ability of VIVUS to supply such API or the Product and could reasonably be expected to have a material negative effect on the Purchaser or the Commercialization of the Product in the Purchaser Territory, within five (5) Business Days of their receipt of such information, in each case to the extent that VIVUS is aware of such information and subject in each case to the redaction right described above. VIVUS or its Third Party designee will consult in advance with Purchaser prior to responding to any request from a Regulatory Authority to the extent such response relates to the API or the Product, and VIVUS will use Commercially Reasonable Efforts to permit Purchaser and/or its agents to be present at any inspection by any Regulatory Authority of any manufacturing facility where the API or the Product that is supplied to Purchaser hereunder is being manufactured or quality tested.

9. TERM; TERMINATION

9.1 **Term**. The term of this Agreement (the "**Term**") will commence on the Effective Date and will continue, unless otherwise agreed between the Parties, for a period ending on the fifth (5^{th}) anniversary of the Effective Date. Thereafter, the Term shall be automatically renewed for successive two- (2) year periods, unless either Party provides a termination notice to the other Party at least two (2) years in advance of the expiration of the then-current Term.

9.2 **Termination for Default or Bankruptcy**. Either Party may terminate this Agreement(a) for material breach by the other Party if such breach continues uncured for a period of thirty (30) days after receipt of notice thereof; provided, however, that, except with respect to any breach of Section 2.4 hereof, in the event the non-terminating Party contests any such asserted breach in good faith and diligently pursues the dispute resolution procedures set forth in Article 14, such thirty (30) day cure period shall be tolled or suspended until the final resolution of such dispute pursuant to the terms of, and in accordance with, the terms and provisions of Article 14; or (b) if (i) the other Party shall institute bankruptcy, insolvency, liquidation or receivership proceedings or proceedings for reorganization under bankruptcy or comparable laws; or (ii) a petition shall be filed against the other Party for any proceedings described in clause (i) above, the effectiveness of which is not stayed or dismissed within sixty (60) days after the filing thereof; or (iii) the other Party shall make a general assignment of all or substantially all of its assets for the benefit of creditors. Termination of this Agreement pursuant to this Section 9.2 shall not affect any other rights or remedies which may be available to the non-defaulting Party, including any rights or remedies under the License Agreement.

9.3 **Termination Upon Termination of License Agreement**. In addition to the termination rights expressly provided for elsewhere in this Agreement, either Party may also terminate this Agreement upon written notice to the other Party if the License Agreement is terminated in accordance with its terms.

9.4 **Termination upon Transfer of Control of Supply Chain**. This Agreement shall automatically terminate upon the completion of the Supply Chain Transfer (as defined in the License Agreement).

9.5 **Effects of Termination**. Upon expiration or termination of this Agreement other than termination of this Agreement by Purchaser under Section 9.2(a), VIVUS shall manufacture and supply, and Purchaser shall purchase from VIVUS (a) any and all quantities of Product ordered by Purchaser pursuant to this Agreement prior to the date on which such notice is given, for the applicable Price, and (b) any and all materials held by VIVUS or Sanofi (or any other Third Party manufacturer of Product) for exclusive use in the manufacture of Compound or Product based on binding part of the Forecasts provided by Purchaser, for an amount equal to the Manufacturing Cost with respect to such materials. Termination or expiration of this Agreement will not affect any outstanding obligations due hereunder prior to the termination or expiration. In the event of Purchaser's termination of this Agreement under Section 9.2(a), Purchaser shall not be required to purchase any additional quantities of Product from VIVUS and all orders of Product shall be immediately voided and of no effect with no further obligation of Purchaser to VIVUS with respect to materials held by VIVUS or a Third Party manufacturer for manufacture of the Compound or Product.

9.6 **Survival**. Expiration or termination of this Agreement shall not relieve the Parties of any obligation accruing prior to the effective date of such expiration or termination. The following sections shall survive termination or expiration of this Agreement for any reason: Sections 2.11, 3.3, 6.1, 6.3 and 8.1 and Articles 9 through 14 and 16.

10. INDEMNIFICATION

10.1 **Indemnification by VIVUS**. VIVUS shall defend and indemnify and hold Purchaser, its Affiliates and their respective directors, officers and employees (the "**Purchaser Indemnified Parties**") harmless against any and all Losses resulting from any Claim of a Third Party arising out of, based on, or caused by (i) alleged or actual bodily injury or property damage resulting from the manufacturing, packing, labeling, handling, storage, transportation, use, distribution of Products by or on behalf of VIVUS, its licensees (other than Purchaser) or Affiliates, including any product liability claim; (ii) liabilities arising from clinical trials conducted by or on behalf of VIVUS in connection with any Products; (iii) the breach by VIVUS of any representation or warranty or covenant contained in this Agreement; (iv) the Product supplied by VIVUS to Purchaser hereunder failing to meet the warranties set forth in Section 4.2, or (v) the negligence or willful misconduct of VIVUS or its Affiliates, sublicensees, or any of its agents, directors, officers or employees, except in each case to the extent that such Losses arise directly from the breach by Purchaser of any representation or warranty or covenant contained in this Agreement or any negligence or willful misconduct by a Purchaser Indemnified Party.

10.2 **Indemnification by Purchaser**. Purchaser agrees to defend and indemnify and hold VIVUS, its Affiliates and their respective directors, officers and employees (the "**VIVUS Indemnified Parties**") harmless against any and all Losses resulting from any Claim of a Third Party arising out of, based on, or caused by (i) the storage, sale, shipment, promotion or distribution of the Product by Purchaser after Purchaser has taken title to the Product, or (ii) the breach by Purchaser of any representation or warranty or covenant contained in this Agreement, except in each case to the extent that such Losses arise (x) directly from the breach by VIVUS of any representation or warranty or covenant contained in this Agreement (including breach of Section 4.2), (y) any negligence or willful misconduct by a VIVUS Indemnified Party, or (z) and are directly attributable to any uncured breach, that is not the subject of a good faith dispute, by VIVUS of the License Agreement.

10.3 **Indemnification Procedures**. The Party claiming indemnity under this Article 10 (the "**Indemnified Party**") shall give written notice to the Party from whom indemnity is being sought (the "**Indemnifying Party**") promptly and in no event later than thirty (30) days after learning of a written claim ("**Indemnified Claim**"). Failure by an Indemnified Party to give notice of an Indemnified Claim within thirty (30) days of receiving a writing reflecting such Claim shall not relieve the Indemnifying Party of its indemnification obligations hereunder except and solely to the extent that such Indemnifying Party is actually prejudiced as a result of such failure to give such notice. The Indemnifying Party shall have the right to assume the conduct and defense of the Indemnified Claim with counsel of its choice so long as the Indemnifying Party is conducting a good faith and diligent defense; provided that, the Indemnifying Party shall not have the right to assume any Indemnified Claim if (x) the Indemnifying Party fails to provide reasonable evidence of its ability and willingness to satisfy such claim, or (y) such claim involves a criminal or regulatory enforcement action. The Indemnified Party shall provide the Indemnifying Party with reasonable assistance in connection with the defense of the Indemnified Claim. The Indemnified Party may monitor such defense with counsel of its own choosing at its sole expense; provided, that if under applicable standards of professional conduct a conflict of interest exists between the Indemnifying Party and the Indemnified Party in respect of such claim, such Indemnified Party shall have the right to employ separate counsel to represent such Indemnified Party with respect to the matters as to which a conflict of interest exists and in that event the reasonable fees and expenses of such separate counsel shall be paid by the Indemnifying Party. The Indemnifying Party may not settle the Indemnified Claim without the prior written consent of the Indemnified Party, such consent shall not be unreasonably withheld, delayed or conditioned. In no event shall the Indemnifying Party settle the Indemnified Claim unless such settlement provides an unconditional and full release of the Indemnified Party. If the Indemnifying Party does not assume and conduct the defense of the Indemnified Claim as provided above: (a) the Indemnified Party may assume and conduct the defense of the Indemnified claim at the Indemnifying Party's expense; (b) the Indemnified Party may consent to the entry of any judgment or enter into any settlement with respect to the Indemnified Claim in any manner the Indemnified Party may deem reasonably appropriate (and the Indemnified Party need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith); and (c) the Indemnifying Party will remain responsible to indemnify the Indemnified Party for Indemnified Amounts as provided in this Article 10.

11. LIMITATION OF LIABILITY

11.1 **Limitation**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, COSTS OR EXPENSES (INCLUDING LOST PROFITS, LOST REVENUES AND/OR LOST SAVINGS) ARISING FROM OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. NOTHING IN THE PRECEDING SENTENCE IS INTENDED TO OR SHALL LIMIT OR RESTRICT (A) THE INDEMNIFICATION RIGHTS OR OBLIGATIONS OF ANY PARTY IN CONNECTION WITH THIRD PARTY CLAIMS UNDER ARTICLE 10, (B) DAMAGES OR INJUNCTIVE RELIEF AVAILABLE FOR A PARTY'S BREACH OF ARTICLE 13, (C) DAMAGES TO THE EXTENT ARISING FROM OR RELATING TO WILLFUL MISCONDUCT OR FRAUDULENT ACTS OR OMISSIONS OF A PARTY OR (D) DIRECT DAMAGES. EXCEPT FOR WILLFUL MISCONDUCT OR LOSSES ASSOCIATED WITH PRODUCT RECALLS, IN NO EVENT SHALL VIVUS' AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT UNDER ANY THEORY OF LIABILITY (WHETHER IN CONTRACT, TORT, STATUTORY OR OTHERWISE) EXCEED THE SUM OF AMOUNTS ACTUALLY RECEIVED BY VIVUS UNDER THIS AGREEMENT AND THE LICENSE AGREEMENT; PROVIDED, HOWEVER THAT THIS LIMITATION SHALL NOT APPLY TO (I) VIVUS' OBLIGATIONS IN CONNECTION WITH THIRD PARTY CLAIMS UNDER ARTICLE 10 OR (II) DAMAGES TO THE EXTENT ARISING FROM OR RELATING TO VIVUS' NEGLIGENT, WILLFUL MISCONDUCT OR FRAUDULENT ACTS OR OMISSIONS. NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL LIMIT THE LIABILITY OF EITHER PARTY UNDER THE LICENSE AGREEMENT.

11.2 **Duty to Mitigate**. Each Party shall use reasonable efforts to mitigate any damages incurred by such Party hereunder.

12. INSURANCE.

12.1 Purchaser shall procure and maintain insurance during the Term of this Agreement and for a period of [***] following the termination or expiration of this Agreement, adequate to cover its obligations hereunder and which are consistent with normal business practices of prudent companies similarly situated. Such insurance shall be written by insurance companies with a rating of at least an "A-" in the latest addition of A.M. Best or its equivalent. Without limiting the generality of the foregoing, Purchaser's insurance shall include, at minimum, the following coverages:

(a) commercial general liability coverage with minimum per claim limits of at least [***] per occurrence and [***] annual aggregate, the policy(ies) for which shall (A) name VIVUS as an additional insured, and (B) be primary and non-contributory;

(b) automobile liability coverage covering all owned, hired and non-owned automobile equipment with minimum per claim limits of [***] per occurrence and annual aggregate, the policy(ies) for which shall name VIVUS as an additional insured;

(c) excess liability/umbrella coverage with minimum per claim limits of at least [***] per occurrence and annual aggregate;

(d) products liability coverage with minimum per claim limits of at least [***] per occurrence and annual aggregate with a [***] extended reporting period endorsement, the policy(ies) for which shall name VIVUS as an additional insured; and

(e) property coverage having limits adequate for Product inventory in Purchaser's care, custody, and/or control and for Product in transit to and from Purchaser.

12.2 VIVUS shall procure and maintain insurance or self-insure during the Term of this Agreement and for a period of three (3) years following the termination or expiration of this Agreement, adequate to cover its obligations hereunder and which are consistent with normal business practices of prudent companies similarly situated. Upon written request, VIVUS shall provide proof of adequate coverage to Purchaser. VIVUS may substitute a self-insurance program to satisfy in whole or in part its obligations under this Article 12 on written notice to the Purchaser with information demonstrating the adequacy of such program.

12.3 It is understood that the insurance requirements in Sections 12.1 and 12.2 above shall not be construed to create a limit of either Party's liability with respect to its indemnification obligations under Article 10. Furthermore, it is understood that Purchaser's insurance requirements in Section 12.1 hereof are intended to be consistent with, and not to increase, the minimum insurance coverage obligations of the Purchaser under the License Agreement. Each Party shall provide the other Party with written evidence of such insurance upon written request. Each Party shall provide the other Party with written notice at least thirty (30) days prior to the cancellation, non-renewal or material change in such insurance (or, in the case of VIVUS, self-insurance, as applicable) that materially adversely affects the rights of the other Party hereunder.

13. CONFIDENTIALITY; PROPRIETARY RIGHTS

13.1 **Confidentiality**. Each Party will maintain the Confidential Information of the other Party in accordance with Article 11 of the License Agreement. The Parties agree not to disclose any financial terms or conditions of this Agreement to any Third Party without the prior consent of the other Party, except as required by Applicable Law.

13.2 **Proprietary Rights**. This Agreement shall not affect the ownership of any intellectual property owned or developed by or licensed to either Party ("**Intellectual Property**") or any rights granted in the License Agreement with respect to such Intellectual Property.

14. DISPUTE RESOLUTION

14.1 **Disputes**.

(a) The Parties recognize that disputes as to certain matters may from time to time arise during the Term which relate to either Party's rights and/or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising under this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Article 14 if and when a dispute arises under this Agreement. In the event of any disputes, controversies or differences which may arise between the Parties out of or in relation to or in connection with this Agreement, including any alleged failure to perform, or breach, of this Agreement, or any issue relating to the interpretation or application of this Agreement, then upon the request of either Party, the Parties agree to meet and discuss in good faith a possible resolution thereof, which good faith efforts shall include at least one in-person meeting between the chief executive officers of each Party; provided that, each Party agrees that any statute of limitation or survival period with respect to such dispute shall be tolled during such discussions. If the matter is not resolved within thirty (30) days following the request for discussions, either Party may then invoke the provisions of Section 14.2.

(b) Notwithstanding anything to the contrary in this Article 14, any Financing Entity may bring a proceeding in a court of competent jurisdiction located in the State of New York solely to enforce its rights under Sections 14.1, 16.1, 16.6, and 16.8 hereof. Such courts of competent jurisdiction located in the State of New York shall have the sole and exclusive jurisdiction to hear and adjudicate any claims pursuant to this Section 14.1(b).

14.2 **Arbitration**. Any dispute, controversy or claim arising out of or relating to the validity, construction, interpretation, enforceability, breach, performance, application or termination of this Agreement that is not resolved pursuant to Section 14.1, shall be settled by binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures of JAMS then in effect (the "**JAMS Rules**"), except as otherwise provided herein. The arbitration shall be governed by the United States Federal Arbitration Act, 9 U.S.C. §§ 1-16 (the "**Federal Arbitration Act**"), to the exclusion of any inconsistent state laws. The United States Federal Rules of Civil Procedure shall govern discovery and the rules of evidence for the arbitration. The arbitration will be conducted in New York, New York, and the Parties consent to the personal jurisdiction of the United States federal courts, for any case arising out of or otherwise related to this arbitration, its conduct and its enforcement. Any situation not expressly covered by this Agreement shall be decided in accordance with the JAMS Rules.

14.3 **Arbitrator**. The arbitrator shall be one (1) neutral, independent and impartial arbitrator selected from a pool of retired federal judges or magistrates to be presented to the Parties by JAMS. Failing the agreement of the Parties as to the selection of the arbitrator within thirty (30) days, the arbitrator shall be appointed by JAMS in accordance with the JAMS Rules.

14.4 **Decision**. The power of the arbitrator to fashion procedures and remedies within the scope of this Agreement is recognized by the Parties as essential to the success of the arbitration process. The arbitrator shall not have the authority to fashion remedies which would not be available to a federal judge hearing the same dispute. The arbitrator is encouraged to operate on this premise in an effort to reach a fair and just decision. Reasons for the arbitrator's decisions should be set forth in accordance with the JAMS Rules. Such a written decision shall be rendered by the arbitrator following a full comprehensive hearing, no later than 6 months following the selection of the arbitrator as provided for in Section 14.3.

14.5 **Award**. Any award shall be promptly paid in United States dollars free of any tax, deduction or offset; and any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by Applicable Law, be charged against the Party resisting enforcement. Each Party agrees to abide by the award rendered in any arbitration conducted pursuant to this Article 14, and agrees that, subject to the Federal Arbitration Act, judgment may be entered upon the final award in any court of competent jurisdiction and that other courts may award full faith and credit to such judgment in order to enforce such award. The award shall include interest from the date of the award until paid in full, at a rate fixed by the arbitrator and the arbitrator may, in his or her discretion, award pre-judgment interest. With respect to money damages, nothing contained herein shall be construed to permit the arbitrator or any court or any other forum to award punitive or exemplary damages. By entering into this agreement to arbitrate, the Parties expressly waive any claim for punitive or exemplary damages, subject to the exceptions set forth in Article 11.

14.6 **Costs**. The arbitrator shall assess his or her costs, fees and expenses against the Party losing the arbitration and shall require such losing Party to reimburse the other Party for all of its reasonable attorneys' fees, costs, and disbursements arising out of the arbitration (including, for example, expert witness fees and expenses, photocopy charges, travel expenses, and so on). Notwithstanding the foregoing, if the arbitrator believes that neither Party is the clear loser, the arbitrator shall divide his or her costs, fees, and expenses according to his or her sole discretion, and each Party shall bear its own attorney's fees, costs, and disbursements arising out of the arbitration.

14.7 **Injunctive Relief**. Provided a Party has made a sufficient showing under the rules and standards set forth in the Federal Rules of Civil Procedure and applicable case law, the arbitrator shall have the freedom to invoke, and the Parties agree to abide by, injunctive measures after either Party submits in writing for arbitration claims requiring immediate relief. Additionally, nothing in this Article 14 will preclude either Party from seeking equitable relief or interim or provisional relief from a court of competent jurisdiction, including a temporary restraining order, preliminary injunction or other interim equitable relief, concerning a dispute either prior to or during any arbitration if necessary to protect the interests of such Party or to preserve the status quo pending the arbitration proceeding.

14.8 **Confidentiality**. The arbitration proceeding shall be confidential and the arbitrator shall issue appropriate protective orders to safeguard each Party's Confidential Information. Except as required to comply with Applicable Laws, including rules and regulations promulgated by the SEC, The NASDAQ Stock Market or any securities exchanges, no Party shall make (or instruct the arbitrator to make) any public announcement with respect to the proceedings or decision of the arbitrator without prior written consent of the other Party. The existence of any dispute submitted to arbitration, and the award, shall be kept in confidence by the Parties and the arbitrator, except as required in connection with the enforcement of such award or as otherwise required by Applicable Law.

14.9 **Survivability**. Any duty to arbitrate under this Agreement shall remain in effect and be enforceable after termination of this Agreement for any reason.

15. PRESS RELEASES; USE OF NAMES

15.1 **Press Releases**. The form and content of any public announcement to be made by one Party regarding this Agreement, or the subject matter contained herein, shall be subject to the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned, or delayed), except as may be required by Applicable Law in which event the Party required to make such announcement shall, to the extent possible, provide to the other Party a written copy of any such required announcement at least three (3) Business Days prior to disclosure to give the other Party reasonable advance notice and review of any such announcement. Notwithstanding the foregoing, either Party may publicly disclose without violation of this Agreement, such terms of this Agreement as are, on the advice of such Party's counsel, required by the rules and regulations of the SEC or any other applicable entity having regulatory authority over such Party's securities; provided that such Party shall advise Purchaser of such intended disclosures and requests confidential treatment of certain commercial terms and technical terms hereof to the extent such confidential treatment is reasonably available to such Party. In the event of any such filing, such Party will provide the other Party, a reasonable time prior to filing, with a copy of the Agreement marked to show provisions for which such Party intends to seek confidential treatment and shall reasonably consider and incorporate the other Party's comments thereon to the extent consistent with the legal requirements applicable to such Party and that govern redaction of information from material agreements that must be publicly filed. The other Party shall provide any such comments as promptly as practicable. The intention of the Parties is to agree upon a single redacted version of the Agreement to be filed with the SEC or any other applicable entity.

15.2 **Use of Names**. Except as otherwise required by law or by the terms of this Agreement or the License Agreement, or as mutually agreed upon by the Parties, neither Party shall make any use of the name of the other Party in any advertising or promotional material, or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

16. MISCELLANEOUS

16.1 **Entire Agreement; Amendment**. This Agreement, including the Exhibits hereto, together with the letter agreement dated September 30th, 2016 between VIVUS and Hercules Capital, Inc., and the terms of the License Agreement which are incorporated herein by reference, sets forth the complete, final and exclusive agreement and all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties hereto with respect to the subject matter hereof and supersedes, as of the Effective Date, all prior agreements and understandings between the Parties with respect to the subject matter hereof. There are no covenants, promises, agreements, warranties, representations, conditions or understandings, either oral or written, between the Parties other than as are set forth herein and therein. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by an authorized officer of each Party. Notwithstanding anything to the contrary in this Section 16.1, no amendment of the definitions of "Financing Entity," "Financing Default," "Qualified Assignee," or "Permitted Assignment" or Sections 14.1, 16.1, 16.6, and 16.8 hereof that effects the rights of any Financing Entity shall be effective without the prior written consent of each Financing Entity.

16.2 **Relationship of the Parties**. The relationship between VIVUS and Purchaser is that of independent contractors and nothing herein shall be deemed to constitute the relationship of partners, joint venturers, or principal and agent between VIVUS and Purchaser. Neither Party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any Third Party.

16.3 **Force Majeure**. Both Parties shall be excused from the performance of any or all of their obligations under this Agreement to the extent that such performance is prevented by force majeure and the nonperforming Party promptly provides notice of the prevention to the other Party; provided that, in the event of a force majeure impacting the Parties' rights and obligations under Section 2.8 and Section 2.11 of this Agreement, VIVUS shall use Commercially Reasonable Efforts to perform its obligations pursuant to Section 2.8 and Section 2.11 of this Agreement, as applicable. Such excuse shall be continued so long as the condition constituting force majeure continues and the nonperforming Party takes reasonable efforts to remove the condition. For purposes of this Agreement, force majeure shall include conditions beyond the control of the Parties, including an act of God, war, civil commotion, terrorist act, labor strike or lock-out, epidemic, failure or default of public utilities or common carriers, destruction of production facilities or materials by fire, earthquake, storm or like catastrophe, and failure of plant or machinery (provided that such failure could not have been prevented by the exercise of skill, diligence, and prudence that would be reasonably and ordinarily expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances). Notwithstanding the foregoing, a Party shall not be excused from making payments owed hereunder because of a force majeure affecting such Party.

16.4 **Notices**. Any notice required or permitted to be given under this Agreement shall be in writing, shall specifically refer to this Agreement, and shall be addressed to the appropriate Party at the address specified below or such other address as may be specified by such Party in writing in accordance with this Section 16.4, and shall be deemed to have been given for all purposes when received, if hand-delivered or by means of facsimile or other electronic transmission, or one (1) Business Day after being sent by a reputable overnight delivery service.

If to VIVUS: VIVUS, Inc.
351 E. Evelyn Avenue
Mountain View, CA 94041
Facsimile: (650) 934-5320
Attention: Chief Financial Officer
Email: cfo@vivus.com

With a copy to: Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Facsimile: (212) 310-8007
Attention: Michael A. Epstein
Email: michael.epstein@weil.com

If to Purchaser: Metuchen Pharmaceuticals, LLC
11 Commerce Drive, 1st Floor
Cranford, NJ 07016
Facsimile: (908) 272-3084
Attention: Greg Ford
Email: GFord@kfe-llc.com

With a copy to: [***]

With a copy to: Lowenstein Sandler LLP
65 Livingston Avenue
Roseland, New Jersey 07068
Facsimile: (973) 597-2400
Attention: Michael J. Lerner
Email: MLerner@lowenstein.com

16.5 **No Strict Construction; Headings; Interpretation**. This Agreement has been prepared jointly and shall not be strictly construed against either Party. Ambiguities, if any, in this Agreement shall not be construed against any Party, irrespective of which Party may be deemed to have authored the ambiguous provision. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section. The definitions of the terms herein apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun will include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" will be deemed to be followed by the phrase "without limitation." Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein), (b) any reference to any laws herein will be construed as referring to such laws and any rules or regulations promulgated thereunder as from time to time enacted, repealed or amended, (c) any reference herein to any person will be construed to include the person's successors and assigns (including any Financing Entity or Qualified Assignee, as applicable), (d) the words "herein", "hereof" and "hereunder", and words of similar import, will be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) any reference herein to the words "mutually agree" or "mutual written agreement" will not impose any obligation on either Party to agree to any terms relating thereto or to engage in discussions relating to such terms except as such Party may determine in such Party's sole discretion, except as expressly provided in this Agreement, (f) as applied to a Party, the word "will" shall be construed to have the same meaning and effect as the word "shall," and (g) all references herein without a reference any other agreement to Articles, Sections, or Exhibits will be construed to refer to Articles, Sections, and Exhibits of or to this Agreement.

16.6 **Assignment**. Neither Party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of the other Party, except that (a) a Party may make such an assignment without the other Party's consent to such Party's Affiliate or to a successor to all or substantially all of the assets or business of such Party to which this Agreement pertains, (b) Purchaser may assign this Agreement and any of Purchaser's rights or obligations hereunder as collateral to any Financing Entity pursuant to one or more Financing Documents without the consent of VIVUS or any other Person, (c) neither the consent of VIVUS nor any other Person shall be required for the assignment of this Agreement and all of Purchaser's rights, obligations and liabilities hereunder (including any and all liabilities that accrued prior to such assignment, but excluding liabilities under Sections 4.4 and 10.2 hereof) to any Financing Entity upon the occurrence of a Financing Default, provided that at least five (5) Business Days prior to any transfer or assignment of this Agreement in accordance with the terms of this clause (c), such Financing Entity provides VIVUS with a general description of the Financing Entity's business and operations or equivalent documentation, and (d) neither the consent of VIVUS nor any other Person shall be required for the assignment of this Agreement and all of Purchaser's rights, obligations and liabilities hereunder by Purchaser (with the consent of the Financing Entity, provided that the Purchaser and the Financing Entity jointly provide timely notice to VIVUS of such consent) or any Financing Entity upon the occurrence of a Financing Default to any Qualified Assignee that is a successor to or assignee of all or substantially all of the assets or business of Purchaser to which this Agreement pertains; provided that any assignment to a Financing Entity or a Qualified Assignee in connection with a Financing Default must also include an agreement, in writing, signed by such Financing Entity or Qualified Assignee, as applicable, to assume performance of all of Purchaser's rights and obligations, and assume all of Purchaser's outstanding liabilities (including any and all liabilities that accrued prior to such assignment, but excluding liabilities under Sections 4.4 and 10.2 hereof), provided that in the case of clauses (c) and (d) above, with respect to any liabilities accrued by Purchaser (including Purchaser's liabilities under Sections 4.4 and 10.2 hereof), such Financing Entity and/or Qualified Assignee, as applicable, shall, at VIVUS' request and expense (which shall be limited to such Financing Entity's or Qualified Assignee's, as applicable, reasonable out-of-pocket-expenses), cooperate and provide reasonable assistance to VIVUS (including the providing, subject to a customary confidentiality agreement, of any relevant information to VIVUS in such Person's possession) in connection with, and to support, VIVUS' efforts to seek recovery for any Losses under Purchaser's insurance policy), thereunder (any of the foregoing assignments, a "**Permitted Assignment**"). Any permitted successor or assignee of rights and/or obligations hereunder shall, in a writing to the other Party, expressly assume performance of such rights and/or obligations. Any assignment or attempted assignment by either Party in violation of the terms of this Section 16.6 shall be null, void and of no legal effect.

16.7 **Governing Law**. Resolution of all disputes arising out of or related to this Agreement or the validity, construction, interpretation, enforcement, breach, performance, application or termination of this Agreement and any remedies relating thereto, shall be governed by and construed under the substantive laws of the State of New York, excluding any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction.

16.8 **Successors and Assigns; No Third Party Beneficiaries**. This Agreement will be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. No provision of this Agreement, express or implied, is intended to or will be deemed to confer upon Third Parties any right, benefit, remedy, claim, liability, reimbursement, claim of action or other right of any nature whatsoever under or by reason of this Agreement other than (i) the Parties and, to the extent provided in Sections 10.1 and 10.3, the Indemnified Parties and (ii) any Financing Entity solely with respect to Sections 14.1, 16.1, 16.6, and this Section 16.8 (and the Parties hereto acknowledge and agree that each Financing Entity (including Hercules Capital, Inc.) is an express third-party beneficiary of such Sections 14.1, 16.1, 16.6, and this Section 16.8. Without limitation of the foregoing, this Agreement will not be construed so as to grant employees of either Party in any country any rights against the other Party pursuant to the laws of such country.

16.9 **Performance by Affiliates and/or Subcontractors**. Any obligation of VIVUS under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at VIVUS' sole and exclusive option, either by VIVUS directly or by any Affiliate or Third Party that VIVUS causes to satisfy, meet or fulfill such obligation, in whole or in part. Any obligation of Purchaser under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at Purchaser's sole and exclusive option, either by Purchaser directly or by any Affiliate of Purchaser or Third Party that Purchaser causes to satisfy, meet or fulfill such obligation, in whole or in part. Each of the Parties guarantees the performance of all actions, agreements and obligations to be performed by any Affiliates of such Party or a Third Party under the terms and conditions of this Agreement, and shall cause its Affiliates or such Third Party to comply with the provisions of this Agreement in connection with such performance. Any breach by a Party's Affiliate of any of such Party's obligations under this Agreement shall be deemed a breach by such Party, and the other Party may proceed directly against such Party without any obligation to first proceed against such Party's Affiliate.

16.10 **Counterparts**. This Agreement may be executed in one (1) or more counterparts, including by facsimile or other electronic transmission, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date last signed below.

METUCHEN PHARMACEUTICALS LLC

By: /s/ J.Gregory Ford
Name: J.Gregory Ford
Title: CEO
Date: 9/30/2016

VIVUS, INC.

By: /s/ Seth H. Z. Fischer
Name: Seth H. Z. Fischer
Title: CEO
Date: 9/30/2016

Acknowledged and Agreed:

HERCULES CAPITAL, INC.

By /s/ Melanie Grace
Name: Melanie Grace
Title: GC/CCO
Date: 9/30/2016

[Signature Page to Commercial Supply Agreement]

EXHIBIT A

Table 1 Specifications for Commercial Bulk Avanafil Tablets

Test	Method	Acceptance Criteria
Description (Appearance)	Visual	Pale yellow oval tablets debossed with dose strength (50 or 100 or 200)
Identification	HPLC	The difference between retention time of standard peak and retention time of sample peak is not more than 0.3 min
Assay	HPLC	95.0-105.0%
Purity (Potential Degradation Products)	HPLC	• Any unspecified degradation product: ≤0.10% • Total: ≤ 0.50%
Uniformity of Dosage Unit	USP<905> Weight Variation Method	USP<905> L1 = 15.0; L2 = 25.0
Dissolution	USP <711> Apparatus 2	USP<711> Q = 85% at 15 minutes
Microbial Limits	USP<61>	USP<1111> Total aerobic microbial count: < 1000 cfu/g Total molds and yeasts count: < 100 cfu/g
Specified Organisms	USP<62>	USP<1111> Escherichia coli: Negative

EXHIBIT B
Current Manufacturing Cost

For Product manufactured by Sanofi, the Manufacturing Cost shall be as follows, subject to an annual Sanofi price increase, currency exchange rate fluctuation and yield loss adjustment if significant:

Dosage forms Current Manufacturing Cost (per tablet)

50mg tablet [***]

100mg tablet [***]

200mg tablet [***]

EXHIBIT C
Minimum Purchase Obligations*

Calendar Year	Minimum Purchase Obligation
2016	[***] tablet equivalents
2017	[***] tablet equivalents
2018	[***] tablet equivalents
2019	[***] tablet equivalents
2020	[***] tablet equivalents
2021 and each calendar year thereafter during any renewal term pursuant to Section 9.1 of the Agreement	[***] tablet equivalents per calendar year

* For purposes of this Agreement, "100mg tablet equivalent" will be calculated as the number of 100mg tablets or two times the number of 200mg tablets. Thus, for example, one 200mg tablet is two 100mg tablet equivalents, and 2.5 million 100mg tablet equivalents equals 1.25 million 200mg tablet equivalents.

EXHIBIT D

Current Inventor

50 mg dosage strength – [***] tablets;

100 mg dosage strength – [***] tablets; and

200 mg dosage strength – [***] tablets.

Exhibit 10.5

PURSUANT TO ITEM 601(b)(10) OF REGULATION S-K, CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THE EXHIBIT
BECAUSE IT IS BOTH NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

LOGISTICS SERVICES AGREEMENT

BY AND BETWEEN

MCKESSON SPECIALTY CARE DISTRIBUTION CORPORATION

AND

METUCHEN PHARMACEUTICALS, LLC

DATED: November 28, 2018

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LOGISTICS SERVICES AGREEMENT

THIS LOGISTICS SERVICES AGREEMENT (the "**Agreement**") is by and between McKesson Specialty Care Distribution LLC, a Delaware limited liability company with offices at 10101 Woodloch Forest Drive, The Woodlands, Texas 77380 USA ("**Provider**") and Metuchen Pharmaceuticals, LLC, a New Jersey limited liability company, with offices at 4400 Rt. 9 S, Suite 1000, Freehold, NJ 07728 ("**Supplier**") is dated and effective this 28th day of November, 2018 (the "**Effective Date**"). Provider and Supplier are sometimes hereinafter referred to collectively as "**Parties**" and individually as a "**Party**".

WHEREAS, Supplier desires to enter into a relationship with Provider for the provision of a comprehensive array of logistical, account management and related distribution services for and on behalf of Supplier (the "**Services**"); and

WHEREAS, Provider wishes to perform the Services on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I: INTERPRETATION AND DEFINITIONS

1.0 **Definitions**. The terms listed in this Section 1.0 shall, for the purpose of interpreting and construing this Agreement, have the meanings indicated herein.

1.0.1 "**ADR**" has the meaning assigned to such term in Section 5.3.

1.0.2 "**Affiliate**" means a person or entity that directly or indirectly controls, is controlled by, or is under common control with another person or entity, whether directly or through one or more intermediaries. For purposes hereof "control" shall be deemed to exist when one person or entity: (i) owns fifty percent (50%) or more of the equity of another person or entity; (ii) has the right to receive fifty percent (50%) or more of the dividends or other distributions of profits of another person or entity; or (iii) has the right to elect or select fifty percent (50%) or more of the board of directors, board of managers or other managerial personnel of another person or business entity. "Controlled" and "controls" shall be construed accordingly.

1.0.3 "**Agreement**" means this Logistics Services Agreement and any annex, exhibit, attachment or schedule hereto, and any amendments to any of the same.

1.0.4 "**Applicable Laws**" means all municipal, local, tribal, state, and federal laws, rules, statutes, codes, orders, decrees, permits, consents, approvals, agreements or regulations applicable to the performance by the Parties of their respective obligations under this Agreement, including but not limited to and to the extent applicable to a Party, compliance with the Federal Food, Drug, and Cosmetic Act and the Prescription Drug Marketing Act, as well as their implementing regulations.

1.0.5 "**Applicable Permits**" shall mean all permits, authorizations, licenses, certificates, approvals or similar requirements of or from any Government Authority or any other organization having the power to regulate or decide on any matter arising out of or in connection with this Agreement or otherwise having jurisdiction over such matters relating to or connected with the activities under this Agreement.

1.0.6 "**Change Order**" has the meaning assigned to such term in Section 3.11.

1.0.7 "**Chargeback**" means a charge arising from a dispute with respect to Products, fraud, processing errors, authorization issues, and non-fulfillment of orders which may result in a reversal of the U.S. Dollar value, in whole or in part, of a particular transaction. For the avoidance of doubt, a Chargeback is measured by the difference between a manufacturer's price to a wholesaler for a particular Product and the contract price for such Product to a particular Customer where the Customer's contract price is lower than the WAC.

1.0.8 "**Chargeback Processing Protocol**" is as set forth in Exhibit F.

1.0.9 "**Claim**" means (i) any third-party claims, demands, litigation, actions, suits, administrative proceedings, or causes of action, and any third-party liabilities, judgments, settlements, costs, losses or expenses including attorney's and expert's fees and costs of litigation, and (ii) any attorneys' fees, penalties, or damages paid to any third party.

1.0.10 "**Confidential Information**" means and includes all patents, know-how, designs, plans, including product development and marketing plans, cost information, advertising programs, data, software, names and information relating to Supplier, manufacturers, suppliers, and shippers and all other non-public information (irrespective of whether designated in writing as confidential), relating to the Products (including sales unit or dollar sales or distribution volume), as well as financial information, plans, strategies, know-how, operations, summaries, notes, analyses and/or studies thereof or relating thereto, and all pricing of Services and projects, and any other information relating to the business of Supplier or Provider that may be divulged in the course of Supplier and Provider's performance of this Agreement, whether written or recorded in electronic or other format and on whatever media. Failure to mark or designate any information as confidential or proprietary shall not affect its status as Confidential Information. All data and reports pursuant to Section 4.1 and all other information and data relating to Products (including without limitation sales volume and customers purchasing the Products) shall constitute Confidential Information of Supplier.

1.0.11 "**Customer(s)"** means any licensed physician, or physician practice**,** wholesaler, buying groups, group purchasing organizations, clinics, pharmacies and hospitals.

1.0.12 "**Distribution**" means, with respect to the Product-related Services provided by Provider under this Agreement, the transportation, storage, and related logistic and administrative services related thereto. For purposes of clarification, but not limitation, "distribution" does not mean, with respect to the Product-related Services provided by Provider under this Agreement, any marketing, promotion, commercialization, sales, purchase, dispensing, or reseller activities or any services that would normally be characterized as full line distribution services.

1.0.13 "**Distribution Center**" means the location controlled by Provider as more specifically identified in Exhibit G hereto that receives, stores and/or ships Products.

1.0.14 "**Effective Date**" is as set forth in the Preamble hereto.

1.0.15 "**FDA**" means the Food and Drug Administration of the United States or any successor agency thereto.

1.0.16 **"Government Authority"** shall mean any court or tribunal of competent jurisdiction, any local, regional or national agency or any government authority, department, legislature, agency, council, department, or official or public or statutory person (whether autonomous or not) of any state that has the power to regulate or decide on any matter arising out of or in connection with this Agreement or which otherwise has jurisdiction over such matters.

1.0.17 "**Insolvency**" means that a Party or an entity that has given a parent company guarantee related to this Agreement on behalf of that Party: (i) makes a general assignment for the benefit of creditors, or petitions or applies for or arranges for the appointment of a trustee, liquidator or receiver, or commences any proceeding relating to itself under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of the country under which the insolvent Party is organized or a country in which the insolvent Party conducts business, now or hereafter in effect (collectively "**Bankruptcy Laws**"), or shall be adjudicated bankrupt or insolvent in such a country; or (ii) gives its approval of, consents to, or acquiesces in, any of the following for a period of sixty (60) days: (A) the filing of a petition or application for the appointment of a trustee, liquidator or receiver against that Party; (B) the commencement of any proceeding under any bankruptcy laws or laws of similar character against that Party; or (C) the entry of an order appointing any trustee, liquidator or receiver; or (iii) is generally unable to pay its debts when due.

1.0.18 "**Morgue Products**" are Products located in the Distribution Center that: (i) are expired; and/or (ii) are unsalable due to damage.

1.0.19 **"Party"** shall mean either Supplier or Provider, depending on the context in which it is used, and **"Parties"** shall mean both Supplier and Provider.

1.0.20 "**PDMA**" means the Prescription Drug Marketing Act of 1987 (as amended by the Prescription Drug Amendments of 1992 ("**PDA**").

1.0.21 "**Person**" means any individual, corporation, partnership, limited liability company, association, business, joint venture, trust, unincorporated organization, Government Authority or other entity.

1.0.22 "**Products**" are as set forth in Exhibit A.

1.0.23 "**Provider"** means McKesson Specialty Care Distribution Corporation and its successors and permitted assigns.

1.0.24 "**Provider Representative**" has the meaning assigned to such term in Section 2.5.

1.0.25 **"Prudent Industry Practices**" shall mean the practices, methods, specifications, and standards of care, skill, safety and diligence, as the same may change from time to time, but applied in light of the facts known at the time, as are generally applied or utilized under comparable circumstances by experienced and prudent professionals in respect of the pharmaceutical distribution industry in the United States of America. "**Prudent Industry Practices**" do not necessarily mean the best practice, method, or standard of care, skill, safety and diligence in all cases, but is instead intended to encompass a range of generally acceptable practices, methods, and standards.

1.0.26 "**Qualified Customer**" is a Customer who: (i) meets Provider's creditworthiness standards consistent with Prudent Industry Practices; (ii) has no history of non-payment or late payments with Provider; (iii) has not, to Provider's knowledge, ever participated in any dealings in diverted Product; (iv) is duly authorized under Applicable Laws to purchase Product; and (v) is not presently eligible for or subject to debarment, suspension or exclusion from contracting with the Federal government.

1.0.27 "**Reference Rate**" means the thirty (30) day LIBOR rate. "LIBOR" shall mean the London Interbank Offering Rate per annum (rounded upwards to necessary, to the nearest 1/16th of 1%) appearing in *The Wall Street Journal*, or if such publication is not available, any successor or similar service for deposits in U.S. Dollars having a thirty (30) day term.

1.0.28 "**Returned Goods Policy**" is as set forth in Exhibit D, as the same may be amended from time to time by Supplier.

1.0.29 "**Services**" has the meaning set forth in the Preamble and as more particularly set forth in Exhibit B and Article III hereof.

1.0.30 "**Subcontractor**" means a Person engaged by Provider for the performance of a portion of the Services.

1.0.31 "**Supplier**" means Metuchen Pharmaceuticals, LLC and its successors and permitted assigns.

1.0.32 "**Supplier's Representative**" has the meaning assigned to such term in Section 2.6.

1.0.33 "**Taxes**" means all levies, fees, charges, duties, tariffs and taxes, including sales taxes, value added taxes, use taxes, excise taxes and stamp taxes, imposed by a Government Authority other than income or franchise taxes imposed on or measured by the net income, net profits or capital of Provider.

1.0.34 "**Term**" has the meaning assigned to such term in Section 9.0.

1.0.35 "**Territory**" means the United States of America and its territories and possessions, excluding the Commonwealth of Puerto Rico.

1.0.36 "**WAC**" means the current wholesale acquisition cost to wholesalers for any of the Products without regard to prompt payment or other discounts, rebates, or Chargebacks.

1.0.37 "**Year**" has the meaning assigned to such term in Section 9.0.

1.1 Interpretation. For the purposes of interpreting and construing this Agreement, unless the context indicates otherwise:

1.1.1 words denoting gender within this Agreement shall be construed to include any other gender;

1.1.2 the word "including" means including without limitation;

1.1.3 references to Articles, sections and Exhibits are, unless the context otherwise requires, references to Articles, sections of and Exhibits to this Agreement;

1.1.4 Articles, sections and Exhibits headings are for ease of reference only;

1.1.5 any reference to a statute, regulation or other legal instrument having the force of law shall be construed as a reference to such statute, regulation or other legal instrument having the force of law as the same may have been, or may from time to time be, amended or re-enacted;

1.1.6 words in the singular case shall be construed to include the plural;

1.1.7 unless expressly stated otherwise, when a time limit is stated in days, it shall mean calendar days (including weekends and public holidays);

1.1.8 the calculation of all dates and periods shall be calculated in accordance with the Gregorian calendar; and

1.1.9 provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing and signed by the agreeing parties.

ARTICLE II: SCOPE OF SERVICES

2.0 **Engagement of Provider**. Supplier engages Provider to perform the Services during the Term. Provider accepts this engagement and agrees to perform the Services during the Term in conformity with the requirements of this Agreement.

2.1 **Standard of Performance**. Provider shall perform the Services (including, without limitation, all storage, handling, shipping and distribution) in accordance with this Agreement, Prudent Industry Practices, reasonable instructions provided or made available by Supplier in advance and agreed to by Provider, such agreement not to be unreasonably withheld, conditioned or delayed, and in conformity with all Applicable Laws.

2.2 **Independent Contractor**. Provider is an independent contractor of Supplier that has been engaged for the purpose of the performance of the Services set forth herein. No other relationship is intended to be created between the Parties. Nothing herein shall be interpreted as creating any partnership between the Parties, and neither shall have the right to act on behalf of the other except as expressly provided in this Agreement.

2.3 **Subcontractors**. Some of the Services to be provided hereunder may be performed by Subcontractors, including, among others, warehousemen, customs brokers, air carriers, water carriers, rail carriers, motor carriers or other transportation providers reasonably selected by Provider. Supplier understands and agrees that such Subcontractors are independent contractors with exclusive control over their respective employees, and not agents, employees or authorized representatives of Provider; provided, however, that Provider shall be fully responsible for the acts and omissions of each Subcontractor as if such acts and omissions were Provider's. Provider shall reasonably verify that Subcontractors have such licenses and permits as are required by Applicable Laws for the lawful provision of the subcontracted Services. At all times during the Term, Provider shall be responsible for payments to Subcontractors, including without limitation, freight charges and any other charges or compensation as required by Applicable Laws. In the event Supplier suffers a loss or damages from the acts or omissions of a Subcontractor that are not within and are not associated with the Services, Provider shall provide assistance reasonably requested by Supplier in connection with any of Supplier's efforts to pursue compensation from and/or legal remedies against any such Subcontractor. Such assistance shall be at Supplier's reasonable, documented cost and expense. Supplier shall be promptly notified in writing of any delegation by Provider of the performance of a material portion of the Services, such notice to include the identity of the Subcontractor and the particulars of any applicable licensure for such Subcontractor.

2.4 **Representative of Provider.** Promptly after execution of this Agreement, Provider shall appoint an individual (the "**Provider Representative**"), who shall be authorized and empowered to act for and on behalf of Provider concerning the day-to-day administration of this Agreement and Provider's obligations hereunder. Provider shall notify Supplier in writing upon the appointment of the Provider's Representative, and of his/her successor(s), if changed.

2.5 **Representative of Supplier.** Promptly after execution of this Agreement, Supplier shall appoint an individual (the "**Supplier's Representative**") who shall be authorized and empowered to act for and on behalf of Supplier on all matters concerning the day-to-day administration of this Agreement and Supplier's obligations hereunder. Supplier shall notify Provider in writing upon the appointment of the Supplier's Representative, and of his/her successor(s), if changed.

ARTICLE III: THE SERVICES TO BE PERFORMED BY PROVIDER

3.0 **The Services.** Provider shall:

3.0.1 ship the Products to Qualified Customers;

3.0.2 store and warehouse the Products in suitable storage facilities within the Distribution Center, in accordance with this Agreement, Applicable Laws, Applicable Permits and Prudent Industry Practices, Provider shall maintain proper records to verify that storage and handling of the Products complies with the requirements of this Agreement and Applicable Laws (such as verification of cold chain storage and distribution compliance) and to the extent Provider is providing Distribution as part of the Services, the Products shall at all times be clearly identifiable as Supplier's property, Provider shall insure such Products against any damage, theft or loss for their full WAC value, and all of Provider's Distribution obligations for the storage, handling and shipping of Products shall occur within the Distribution Center(s);

3.0.3 provide or engage Subcontractors for the performance of such activities as are required for the performance of the Services;

3.0.4 promptly notify Supplier of any matters that come to the attention of Provider concerning the Products that may indicate a manufacturing/packaging defect, contamination, or tampering;

3.0.5 provide such customer services relating to the sale of the Products as are more specifically provided for in Exhibit B;

3.0.6 maintain a sufficient number of trained and suitably qualified personnel for the proper administration of the Services;

3.0.7 furnish to Supplier such reasonable information and reports relative to the Services and the distribution of Products as may be permitted or provided for hereunder;

3.0.8 not modify or alter any of the Products; and

3.0.9 cause its employees and agents to materially comply with all policies of Supplier and its suppliers that are relevant to the Services and to which Provider has agreed in writing.

3.1 Government Approvals; Compliance.

3.1.1 Provider shall, at its expense, obtain and maintain any and all Applicable Permits that may be necessary to permit the performance of the Services. Provider disclaims any responsibility for any Applicable Permits required to be procured, obtained or maintained by Supplier or any of its suppliers, but Provider will reasonably cooperate with Supplier in connection with any such activities.

3.1.2 Provider will comply with any and all Applicable Laws and Applicable Permits applicable to Provider in the performance of the Services, including, without limitation, those with respect to the storage or distribution of the Products, including the Federal Food, Drug and Cosmetic Act and the PDMA.

3.2 Recall or Market Withdrawal. Supplier may elect, in its sole discretion, to recall or withdraw any of the Products from the market; provided, however, that Supplier shall withdraw any of the Products from the market as a result of the requirements of any Government Authority with jurisdiction within the Territory.

3.2.1 In the event of such a withdrawal or recall, Supplier shall promptly provide Provider as much advance written notice as reasonably possible of such recall or withdrawal and the requirements thereof. The Parties shall reasonably cooperate in effecting such recall or withdrawal.

3.2.2 Provider shall comply with Supplier's reasonable instructions regarding the recall or withdrawal of Products from Provider's stock and from customers that received such Products, and shall use commercially reasonable efforts to retain records sufficient to effectuate such recall or withdrawal pursuant to Supplier's recall or withdrawal policy, including, but not limited to, maintaining records that document the lot numbers of Products stored or distributed by Provider.

3.2.3 Supplier shall reimburse Provider for its reasonable, documented, out-of-pocket costs (including Provider's suitably documented internal costs) necessarily incurred in connection with such recall or withdrawal, except to the extent such costs are due to a failure of Provider to comply with and adhere to: (i) this Agreement, or (ii) Applicable Laws relating to the storage, handling, shipping or distribution of the affected Products.

3.3 Audits, Records and Inspection.

3.3.1 Provider shall maintain a true and correct set of records in accordance with Applicable Laws and Applicable Permits, which shall document its performance and compliance in accordance with this Agreement. Except as may be otherwise required by a Government Authority pursuant to Applicable Laws (in which case, such broader scope or longer duration may apply) and upon not less than five (5) business days prior written notice, Supplier may perform an audit of the foregoing records or of the Distribution Center(s), at its sole expense during the Term and for two (2) calendar Years after the termination of this Agreement. Such audit shall be performed during regular business hours using one or more representatives of Supplier (which may include, without limitation, third party independent professional auditor(s), mutually acceptable to the Parties). Provider shall not unreasonably withhold or condition its approval of any auditor acceptable to Supplier. No auditor shall be allowed to perform an audit without first executing a confidentiality agreement reasonably acceptable to the Provider and Supplier. Any such audit shall be completed within thirty (30) days of the date that Provider provides the reasonably requested documentation to the auditor. Any information obtained by the audit shall be kept confidential and shall not be disclosed to a third party (other than any third-party auditor(s) engaged by the auditing Party, which such auditors shall be bound by written agreements of non-use and non-disclosure at least as stringent as those same obligations under this Agreement) unless disclosure is required by Applicable Laws. Supplier may not conduct more than one (1) audit in each calendar Year and the scope of the audit shall be limited to records relating to the immediately preceding eighteen (18) calendar months; provided, however, that the limitations in the foregoing sentence shall not apply to the extent reasonably necessary for Supplier to respond to requests by any Government Authority. Provider shall cooperate as reasonably requested by Supplier in connection with Supplier's efforts to respond to and resolve any inquiry or concerns raised by any Governmental Authority in connection with the Services, including, without limitation, by providing Supplier copies of any documents or records reasonably necessary for Supplier to respond to the Government Authority (such copies may be redacted to exclude information unrelated to the Services and as reasonably necessary to protect third parties' confidential information). Notwithstanding the foregoing, if an audit report created pursuant to this section reflects a determination by the professional auditor that Distributor has engaged in material and adverse misstatements in any of the reports or invoices provided to Supplier by Provider pursuant to this Agreement, Supplier may conduct one additional audit within the then current year to resolve any such misstatements. This additional audit may cover a scope of up to twenty-four (24) calendar months.

3.3.2 Except in the event that such disclosure would be contrary to Applicable Laws or the request of the applicable Government Authority, Provider shall as soon as reasonably possible but in any event within two (2) business days (i) inform Supplier of any formal inspection or audit by any Government Authority substantially related to or affecting the Services; (ii) provide Supplier with copies of any Government Authority inspection observation reports and correspondence relating to the foregoing inspection or audit (to the extent applicable to the Services and suitably redacted to exclude information unrelated to the Services and as reasonably necessary to protect the confidential information of third parties); and (iii) inform Supplier of any action taken by any Governmental Authority against Provider or any of its officers, employees, agents, or Affiliates, where such action could reasonably be expected to adversely affect Supplier and/or the Services.

3.4 **Returns**. Provider will handle all returns hereunder in accordance with the Returned Goods Policies set forth in Exhibit D hereto. Provider shall charge for the processing of each return in accordance with the provisions of Exhibit C hereto. Supplier shall be apprised in writing of Morgue Products and if Supplier fails or neglects to instruct Provider as to the disposition of Morgue Products within thirty (30) days of the date of Provider's request for instruction, Provider will cause the disposition of the Morgue Products in accordance with Applicable Laws and charge the Supplier for the cost of same as set forth in Exhibit C hereto.

3.5 **Chargebacks**. Provider will handle all Chargebacks hereunder in accordance with the Chargeback Processing Protocol set forth in Exhibit F hereto. Provider shall charge for the activities under the Chargeback Processing Protocol in accordance with the provisions of Exhibit C hereto.

3.6 **Transport/Storage**. Provider shall: (i) transport and (ii) maintain the Products at the Distribution Center, in each case, in accordance with Prudent Industry Practices, including such refrigeration and/or climate controlled transport and storage as may be dictated by Prudent Industry Practices, Applicable Laws and Applicable Permits and such other policies that have been agreed to in writing by the Parties. .

3.7 **Distribution of Samples**. Supplier may, from time to time, request that Provider deliver or cause to be delivered one or more cases of samples of Products to sales representatives of Supplier or to prospective Customers. Upon receipt of any such request, and if permitted by Applicable Laws, Provider shall undertake to effect such deliveries promptly and with all reasonable diligence, *provided, however*, that for each case of samples of Product so delivered by Provider, Provider shall charge Supplier the delivery and processing fees set forth in Exhibit C.

3.8 **Quality Assurance/Quality Control (QA/QC).** Provider shall institute a quality assurance/quality control system to demonstrate compliance with the requirements of this Agreement, that certain Quality Agreement between the Parties (the "**Quality Agreement**"), and all Applicable Laws and Applicable Permits. Details of all QA/QC procedures and compliance documents shall be submitted to the Supplier's Representative and shall be periodically updated by Provider and approved by Supplier, in each case in accordance with the Quality Agreement. When any QA/QC document is issued to the Supplier's Representative, it shall be accompanied by the signed quality statements and certifications for such document.

3.9 **Adverse Event and Other Reports**. If Provider receives any report of any adverse event or other safety-related event, or any quality complaints associated with the Products, Provider will use commercially reasonable efforts provide any such report by appropriate facsimile or email to Supplier within two (2) business days after receipt thereof. If Provider receives follow-up information with respect to any adverse event or Product quality complaint after initial reporting of an adverse event or Product quality complaint, Provider shall use commercially reasonable efforts to report such new information to Supplier within one (1) business day after receipt thereof.

3.10 **Pharmacovigilance**. Without limiting Provider's obligations under Section 3.9, all submission of reports to any Government Authority and verification of and follow-up for reports provided by Provider are the sole and exclusive responsibility of Supplier. Notwithstanding anything else contained herein, Supplier acknowledges that: (i) Provider does not have a centralized reporting function or formalized pharmacovigilance program; (ii) as a result Provider may not be able to notify Supplier (or Supplier's applicable designee) of all adverse events and Product quality complaints reported to Provider; and (iii) nothing herein shall require Provider to implement any such centralized reporting function or pharmacovigilance program. Notwithstanding the foregoing, Provider shall cooperate as reasonably requested by Supplier, at Supplier's reasonable, documented cost and expense, in Supplier's efforts to investigate Product potential adverse events or complaints reported to Provider.

3.11 **Change Orders**. Subject to Applicable Laws and Applicable Permits, Supplier may request changes in the Services through the issuance of a Change Order (a "**Change Order**"). If Provider reasonably believes that the Supplier has requested or required services which are not otherwise provided for herein, Provider may propose a Change Order to Supplier. A Change Order signed by Supplier and Provider indicates an agreement to the changes in the Services and adjustments in the fees and charges payable hereunder reflected in such Change Order. Supplier and Provider shall use their good faith efforts to agree on the price and time adjustments for such changes prior to the issuance of such Change Order. If, however, the Parties cannot agree on the adjustment to be made, then if requested by the Supplier in writing, Provider shall nevertheless proceed to execute the changed Services described in the Change Order and the Parties shall continue to diligently and in good faith discuss and work on establishing mutually agreed fee adjustments for such changed Services (and such charges shall be in accordance with Exhibit C if such Services are described in Exhibit C, and otherwise shall not exceed Provider's customary rate structure or fee schedule (including any customary volume discounts or rebates), as applicable), and Supplier shall pay such charges in accordance herewith.

ARTICLE IV: SHIPPING AND DATA REPORTING

4.0 Quantity and Delivery.

4.0.1 **Title to and Risk of Loss of the Goods.** It is understood and agreed between the Parties hereto that, unless otherwise expressly agreed to in writing by Provider, Provider shall not acquire title to or assume risk of loss for any of the Products on behalf of Supplier, and shall not, in the course of providing the Services in accordance with this Agreement, acquire title to or assume risk of loss for, or be deemed to have acquired title to or assumed risk of loss for, the Products; With respect to any Products placed into Provider's separate "Title Model" storage option, pursuant to Supplier's written authorization or instructions, title to and risk of loss for such Products shall pass to Provider upon such placement. All such Product for which Provider takes title shall have a shelf life of not less than six (6) calendar months from the date of Provider's assumption of title.

4.0.2 Intentionally omitted.

4.0.3 The reasonable, documented, out-of-pocket costs of shipping Products from the Distribution Center to Customers shall be borne by Supplier. Provider will procure all required packing and shipping material for the Products and charge Supplier for the same, including all dunnage, bracing, packing material or other special supplies, at the rates provided for the same in Exhibit C. All shipping material shall comply with the minimum packing and shipping requirements set forth in Exhibit E hereto.

4.0.4 Upon receipt of each shipment of Products at the designated delivery location or locations, Provider shall promptly inspect it, or cause it to be promptly inspected, for any apparent physical damage, shortages, or inconsistencies with the packing list, inventory and bill of lading that is to accompany each shipment. Provider may propose to Supplier the rejection of any shipment or portion thereof of Products which it reasonably deems defective, damaged, wrong or short. Provider shall notify Supplier in writing within seven (7) business days after each such delivery of Products of any such apparent damages, shortages or inconsistencies and of its proposal for rejection of the applicable shipment or shipments. Where a shipment or portion thereof of Products is defective, damaged, wrong or short and such matters are not apparent upon delivery, Provider shall notify Supplier in writing within seven (7) business days after the discovery of any such damages, shortages or inconsistencies.

4.0.5 Products proposed for rejection by Provider shall be held by Provider until instructions are received from Supplier regarding resolution of the circumstances and thereafter accepted, returned or destroyed by Provider, as requested by Supplier and at Supplier's expense.

4.0.6 **Handling.** Warehouse handling rates and charges as shown in Exhibit C include, but are not limited to, receipt of Products at the Distribution Center door, placement of Products in storage, and return of Products to the Distribution Center door.

4.0.6.1 Any labor, equipment or materials used by Provider to load Products in any vehicle are chargeable to Supplier at the rates provided for in Exhibit C.

4.0.6.2 Provider shall not be liable for demurrage, delays in unloading inbound shipments, or delays in obtaining, and loading vehicles for outbound shipments, unless Provider has failed to act in accordance with Prudent Industry Practices or those Supplier policies to which the Provider has agreed-to in writing.

4.0.6.3 If, as a result of the character, weight and dimensions of appliances, bulky articles, floor loaded products, carton or bagged Products, or any collective bargaining, labor agreement or employment agreement, the delivery driver or teamsters cannot or will not place items on Provider's or a Subcontractor's dock, Provider may assist the driver or teamsters with unloading. All labor and supervision furnished by Provider or a Subcontractor under those circumstances is chargeable to Supplier as a handling charge at the rates set forth in Exhibit C.

4.0.6.4 Warehouse labor and supervision required for services other than ordinary handling and storage will be charged to the Supplier at the rates provided for the same in Exhibit C.

4.0.6.5 Special services requested by the Supplier, including, but not limited to, compiling of special stock statements, reporting marked weights, serial numbers or other data from packages, physical check of Products other than the normal process of receiving and handling, and handling transit billing will be charged to the Supplier at the rates provided for the same in Exhibit C.

4.0.7 **Receipts and Bills of Lading**. Each shipment of Products made by Provider under this Agreement shall be evidenced by a Uniform Straight Bill of Lading substantially in the form published in the National Motor Freight Classification, Tariff STB NMF 100-X or, for international shipments, any bill of lading or other shipping document required by applicable law. For air shipments, an air waybill shall be utilized. The terms, conditions and provisions of such bills of lading or waybills shall be subject and subordinate to the terms, provisions and conditions of this Agreement.

4.1 **Data Reporting**.

4.1.1 Subject to Applicable Laws, Provider shall make certain reports available to Supplier utilizing a web portal. The reports will cover the following areas: (i) Product replenishment; (ii) Product ordering; (iii) distribution operations; (iv) invoicing and collections; and (v) contracts and Chargebacks. During the Term, Supplier shall have access to Provider's supplier specific website at all times. If there is an unplanned outage of the supplier specific website, the Parties will cooperate to implement a solution so that Supplier will have access to the information that would have been available on the website but for the outage (through manual reports or otherwise) no later than five (5) business days following the outage. If critical internal support systems or electronic communication links including Electronic Data Interchange (EDI) are not available for five (5) business days, the Parties will cooperate to promptly implement substitute procedures to document the information customarily sent by EDI and prevent interruptions to each other's business.

4.1.2 As reasonably requested by Supplier, Provider shall configure or cause certain of its SAP systems so as to permit the efficient reporting of sales and distribution of Products, and to permit certain integration with Supplier's systems to effect the timely and efficient recordation of price information pertaining to the sales of Products. Provider shall undertake to cause such configuration and related information technology services to be performed, *provided, however*, that Provider shall provide a good-faith estimate of costs related to such configuration or information technology services and, if such costs are approved by Supplier, the cost of such configuration shall be reimbursed by Supplier at reasonable, documented cost (which shall include Provider's reasonable, documented internal labor and equipment costs). If Supplier does not approve such costs, the Parties shall cooperate in good faith to revise and mutually agree upon the proposed configuration and information technology services and costs therefor. Supplier may request additional reporting by Provider, provided, however, all such additional reporting that would impose a material expense or burden on Provider shall require a Change Order.

ARTICLE V: GOVERNMENT APPROVALS AND COMPLIANCE BY SUPPLIER

5.0 **Government Permits**. Supplier shall, at its expense, obtain and maintain, and shall ensure that its' suppliers (and, as applicable, Subcontractors) obtain and maintain, any and all Applicable Permits that may be necessary to permit the performance by Supplier of its and their obligations hereunder within the Territory.

5.1 **Compliance with Applicable Laws**. Except as expressly authorized by the FDA with respect to the Products under special circumstances, Supplier shall comply with any and all Applicable Laws that are applicable to Supplier, including, but not limited to, those with respect to the marketing, sale or distribution of the Products, including the Federal Food, Drug and Cosmetic Act and the PDMA.

5.3 **Authorized Provider of Record.** To the extent not already so provided for as of the Effective Date and only if and to the extent required by Applicable Laws or Applicable Permits, Supplier shall promptly arrange for the manufacturer of each of the Products to designate Provider as an Authorized Distributor of Record ("**ADR**") for the Products in accordance with the PDMA.

5.4 **Labeling and Purchasing.** Except as expressly authorized by the FDA with respect to the Products under special circumstances, Supplier shall ensure that the Products are labeled and packaged in accordance with applicable FDA labeling requirements and other requirements of Applicable Laws.

5.5 **Accurate Information.** Supplier shall provide Provider with reasonably complete, accurate and timely information regarding the Products to be transported, sold or stored. Supplier will comply with, and provide to Provider all documents and information legally required under, the Drug Supply Chain Security Act (the "**DSCSA**") and any FDA regulations and guidance issued pursuant to the DSCSA, in effect during the Term, which may include, without limitation, "Transaction Information", "Transaction History", and "Transaction Statement", as those terms are defined in the DSCSA.

ARTICLE VI: TERMS OF SALE AND PAYMENT; TAXES

6.0 **Sale of Product**.

6.0.1 **Price and Terms of Sale.** Provider will manage billing and collection of payments from Customers and in accordance with Prudent Industry Practices and the provisions of this Agreement.

6.0.2 **Discount Pricing**. For any discount of any kind or character (including rebates and guarantees that operate as a discount to the WAC) given by Supplier to a Customer, Provider may charge that amount back to Supplier.

6.0.3 **Changes to the WAC**. Notwithstanding the WAC pricing for the Products, in connection with the sale of any Product, Supplier may amend the WAC price for Products in its sole discretion at any time upon seven (7) days prior written notice to Provider.

6.1 **Payment for the Services**. The fees and payment terms for the Services (including any fees or charges due pursuant hereto) shall be invoiced as set forth in Exhibit C.

6.1.1 **Invoice**. Supplier shall pay Provider the rates and charges described in Exhibit C and any other amount which becomes due and payable under this Agreement. Payment shall be due from Supplier within thirty (30) days from the date of Provider's invoice. If Supplier disputes all or a part of an invoice for Services, Supplier will promptly notify Provider in writing and Supplier will pay the undisputed amount of the invoice in accordance with this Section 6.1.1. Payment disputes shall be resolved in accordance with Section 14.9 and, following such resolution, any agreed adjustment will, as applicable, be: (i) paid by Supplier; or (ii) if the adjustment is to the final invoice, refunded.

6.1.2 **Set-Off**. Notwithstanding anything to the contrary in this Agreement, Provider is hereby authorized to set-off, recoup and apply any undisputed amounts owed by it to Supplier against any and all undisputed amounts owed by Supplier to any of Provider or its Affiliates, without prior written notice. Supplier may not offset against amounts owed to Provider hereunder.

6.1.3 **Spot Quotes**. The Parties understand that additional services other than those set forth herein may periodically arise. If requested by Supplier, Provider shall spot quote the requested services in writing, which will become the applicable rate upon Provider receiving written acceptance of the spot quote from Supplier (written acceptance includes e-mail from Supplier's Representative). Upon request from Supplier, Provider shall include with its invoice for the spot quote a copy of the written acceptance. Unless the spot quote and the written acceptance clearly indicate that the services provided and the applicable rate are to be on an extended basis (e.g., for the remainder of the Term), the spot quote will apply only to the immediate services provided. Services provided pursuant to spot quotes will be subject to the provisions of this Agreement, including any limitations and waivers of liability.

6.1.5 **Interest.** Any undisputed overdue amount owed to either Party by the other Party shall accrue interest each day from the date that such amount is due until the date paid at the Reference Rate.

6.2 **Taxes.** Supplier shall pay, or, as applicable, reimburse Provider on demand for all Taxes as may arise out of or relate to the performance of the Services, *provided, however*, Provider shall be fully responsible for and not entitled to any reimbursement for any taxes imposed upon Provider's net income, or for franchise or similar taxes based on assets or gross receipts of Provider. If Supplier is exempt from the payment of any applicable sales and/or use taxes or has a direct payment permit with respect to such taxes, Supplier shall provide Provider with a copy of the certificate or permit, duly executed and issued by the appropriate Government Authority. Request for payment and/or reimbursement of any Taxes shall be included in the invoices tendered to Supplier pursuant to Section 6.1.1 hereof. Each request for reimbursement and/or payment shall be separately stated thereupon as a line item and shall be contemporaneously supported by reasonable documentation reflecting the Taxes to be reimbursed and/or paid.

6.3 **Determination of Fees.** The Parties agree and acknowledge that: (i) unless otherwise agreed in writing, the fees provided hereunder will be Provider's sole, full and complete form of compensation provided by Supplier for the Services, (ii) the fees are being paid for bona fide services and have been negotiated at arm's length in good faith by the Parties for the Services, and (iii) the fees are not intended in any way as remuneration for referrals or for other business generated.

ARTICLE VII: REPRESENTATIONS, WARRANTIES AND COVENANTS

7.0 Each of the Parties warrant and represent that:

7.0.1 It is duly organized and validly existing under the laws of the State of its formation, with full legal right, power and authority to enter into and to perform its obligations hereunder;

7.0.2 It has duly authorized, executed and delivered this Agreement and this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, by general equitable principles or by principles of good faith and fair dealing;

7.0.3 Subject to Section 5.6, neither the execution nor delivery by it of this Agreement, nor the performance by it of its obligations hereunder conflicts with, violates or results in a breach of any Applicable Laws, or conflicts with, violates or results in a breach of any term or condition of any order, judgment or decree or any agreement or instrument to which it is a party or by which it or any of its properties or assets are bound, or constitutes a default thereunder;

7.0.4 No approval, authorization, order, consent, declaration, registration or filing with any Government Authority is required for the valid execution and delivery of this Agreement; and

7.0.5 It has no knowledge of any action, suit or proceeding, at law or in equity, before or by any court or Government Authority, pending against it, in which an unfavorable decision, ruling or finding would adversely affect the performance by it of its obligations hereunder, or that, in any way, would materially adversely affect the validity or enforceability of this Agreement.

7.1 Supplier represents and warrants that:

7.1.1 It owns the unrestricted right to distribute, sell and market the Products in the Territory, including the right to grant to Provider the rights or licenses granted hereunder;

7.1.2 The Products are and will be free from material defects in material and workmanship;

7.1.4 The Products shall be compliant with all Applicable Laws, including, all regulatory requirements of the Food and Drug Administration ("**FDA**"), including those related to the adulteration and misbranding of products within the meaning of the Food, Drug and Cosmetics Act ("**FDCA**");

7.1.5 The Products shall not be articles which may not be introduced into interstate commerce pursuant to the requirements of Sections 505, 514, 515, 516 or 520 of the FDCA; and will have been manufactured in accordance in all material respects with current FDA Good Manufacturing Practices as required by 21 CFR § §210 and 820;

7.1.6 To the best of Supplier's knowledge, the Products do not infringe or violate any patent, copyright, trademark or other exclusive right of any third party;

7.1.7 As applicable, the Products have been approved by the FDA pursuant to Section 505 of the FDCA;

7.1.8 Supplier's terms and conditions of sale are compliant with the requirements of the Robinson-Patman Act and that they are not in violation of the provisions of said Act or of any other Applicable Laws;

7.1.9 No article comprising or being part of any shipment or other delivery now or hereafter made to Provider or on Provider's order by Supplier will be: (1) an article that was originally distributed as a sample not intended for resale, (2) an article that has been obtained from or through persons not lawfully entitled to receive, possess, distribute or resell same, (3) an article that has been altered, relabeled or repackaged since its initial shipment from the manufacturer thereof, or (4) an article defined as "hazardous" by the U.S. Department of Transportation under Code of Federal Regulations, Title 49, Parts 170-179;

7.1.10 each article comprising or being part of any shipment or other delivery now or hereafter made to Provider or on Provider's order by Manufacturer either (1i) may be sold by Provider for use by California consumers without a warning required by California Health & Safety Code sections 25249.5 et. seq. ("**Proposition 65**"), or (2) is labeled with or accompanied by a valid Proposition 65 warning; and

7.1.11 it will make no materially false or misleading representations with regard to Provider.

7.2 Provider represents and warrants that:

7.2.1 All personal information obtained in the performance of the Services will be protected in compliance with this Agreement and all Applicable Laws;

7.2.2 Provider shall not knowingly enlarge or otherwise knowingly misrepresent any warranties or other information relating to the Products or Supplier;

7.2.2 The Services (exclusive of any infringement upon any such rights by the Supplier and the Products) do not and shall not infringe or violate any patent, copyright, trademark or other exclusive right of any third party;

7.2.3 As of the Effective Date, to its knowledge neither Provider nor any of its officers or directors has been debarred pursuant to the Federal Food, Drug and Cosmetic Act ("**FDCA**") or been excluded from participating in a federal health care program, including without limitation the Medicare or Medicaid programs. Moreover, if Provider or any of its officers and directors is subsequently debarred under the FDCA or excluded from a Federal health care program, Provider agrees to notify Supplier as soon as reasonably possible of such action; and

7.2.7 It is, and shall remain, throughout the Term in compliance with all Applicable Laws applicable to its performance of the Services.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, NEITHER PARTY HERETO MAKES ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS, STATUTORY WARRANTIES, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND WHATSOEVER RELATING EITHER TO THE PRODUCTS OR THE SERVICES, INCLUDING (WITHOUT LIMITATION) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. ALL SUCH OTHER WARRANTIES AND REPRESENTATIONS ARE HEREBY DISCLAIMED.

ARTICLE VIII: CONFIDENTIALITY; PROPRIETARY RIGHTS; INTELLECTUAL PROPERTY

8.0 **Confidential Information.** The Parties acknowledge that the Confidential Information comprises valuable proprietary information and the exclusive property of the Party to which such Confidential Information relates. During the Term and for a period of two (2) Years thereafter, the receiving Party shall hold the Confidential Information of the other Party in strict confidence, and shall use such Confidential Information solely for the purposes of performing hereunder. The receiving Party may only disclose Confidential Information of the other Party to those directors, officers, employees, attorneys, contractors, agents and Affiliates (each a "**Representative**") who have a need to know and who are bound by obligations of confidentiality and non-use with respect to such Confidential Information that are at least as restrictive as those set forth herein. Each of the Parties agrees to: (i) advise their Representatives of the proprietary nature of the Confidential Information and the terms and conditions of this Agreement requiring that the confidentiality of such information be maintained; and (ii) use reasonable safeguards to prevent unauthorized use by such Representatives. Each Party shall be responsible for any breach of this Agreement by its respective Representatives.

8.1 **Agreement Confidentiality, Non-Use.** Neither Party hereto shall disclose the terms of this Agreement or any other data or information relating to the Parties' activities hereunder to any other person or entity other than such Party's Representatives, or as may otherwise be required by Applicable Laws, nor shall either Party use the other Party's Confidential Information for its own benefit (other than performance under this Agreement) or for the benefit of third parties. In the event a Party reasonably believes it is required by Applicable Laws to disclose any Confidential Information, including the terms of this Agreement, such Party shall, if legally permitted: (i) prior to any such proposed disclosure, allow and reasonably assist the other Party in taking any action to lawfully prevent or limit any such disclosure, and (ii) disclose only the minimum Confidential Information required to be disclosed, only to the required recipient(s), in order to comply with the applicable requirement and (iii) not disclose such Confidential Information to any third party to the extent such information is not generally available in the public domain. Notwithstanding the foregoing, each Party will be permitted, without prior approval, to disclose that Provider provides the Services to Supplier and the general nature of the Services.

8.2 Sections 8.0 and 8.1 shall not apply to:

8.2.1 Confidential Information which is or becomes public knowledge (through no fault of the Parties or their Representatives in violation hereof); or

8.2.2 Confidential Information which is lawfully made available to a Party by an independent third party (and such lawful availability can be properly demonstrated); or

8.2.3 Confidential Information which is already in a Party's possession at the time of initial receipt from the other Party (and such prior possession can be demonstrated by competent evidence); or

8.2.4 Confidential Information which is independently developed by a Party or its Representatives without use of or reference to the other Party's Confidential Information, and such independent development can be demonstrated by competent evidence.

8.3 **Injunctive Relief**. Each Party acknowledges and agrees that its breach of the confidentiality and non-use obligations set forth herein would cause irreparable harm to the disclosing Party which would not be fully compensable by payment of money damages alone, and that in the event of such a breach or threatened breach the disclosing Party shall be entitled to seek equitable relief (including without limitation injunctive relief), without the necessity of proving actual damages or posting a bond. Such equitable relief shall be in addition to and not in lieu of any other relief available to the disclosing party at law or in equity.

8.4 All Confidential Information which either Party or any of its Representatives shall obtain or to which either Party or any such Representative shall be given access pursuant to or in connection with this Agreement, shall be and remain the sole property of the disclosing Party, and the receiving Party shall have no rights or interests (except as expressly provided herein) to or in such Confidential Information.

8.5 **Intellectual Property.** Neither Party shall obtain any rights to (or goodwill associated with) any trademarks, service names or service marks of the other Party, nor shall either Party conduct any activity or make any statement, written or oral, which in any manner may constitute infringement upon the use of such trademarks, service names or service marks by the other Party. Neither Party shall directly or indirectly register, or attempt to register, any trademarks, service names or service marks of the other Party (or anything confusingly similar thereto) in any jurisdiction. Any use by a Party of the other Party's trademarks, service names or service marks shall be in accordance with such other Party's trademark usage guidelines (as provided or made available by such other Party).

ARTICLE IX: TERM AND TERMINATION

9.0 **Term**. The term of this Agreement shall commence on the Effective Date and continue in full force and effect for a period of four (4) Years, unless otherwise terminated as set out in this Agreement (the "**Term**"). For purposes of this Agreement, a "**Year**" is a period of twelve (12) consecutive calendar months. If the Term or any renewal term commences on any day other than the first day of a calendar month, such month shall be deemed to constitute a complete calendar month.

9.1 **Termination for Convenience**. Either Party hereto has the right to terminate this Agreement for its convenience at any time by not less than one hundred eighty (180) days' prior written notice to the other Party. On the termination date stated in the notice, the Party receiving the notice shall discontinue all activities pertaining to this Agreement, shall neither place or accept any additional orders, and shall preserve and protect materials and Products on hand purchased for or committed to this Agreement pending the terminating Party's instructions and shall dispose of same in accordance with terminating Party's instructions.

9.2 **Termination for Breach**.

9.2.1 Either Party may terminate this Agreement in the event of a material breach by the other Party of any material obligation of this Agreement on thirty (30) days' prior written notice to the other, specifying the nature of the breach, unless such other Party shall cure such default within such thirty (30) day period (or, if not capable of being remedied within such thirty (30) day period, diligently seeks to remedy the breach within such thirty (30) day period and promptly thereafter, using continuous and diligent efforts, cures such default).

9.2.2 Notwithstanding the provisions of Section 9.2.1, either Party may terminate this Agreement on written notice with immediate effect upon the occurrence of any of the following to or by the other Party:

9.2.2.1 a transfer or assignment of this Agreement without the prior written consent of the non-transferring Party not otherwise permitted or provided for by the provisions of this Agreement; or

9.2.2.2 the Insolvency of the other Party; *provided, however,* that the Party which is not Insolvent may waive such termination right.

9.3 **Rights of Parties on Termination or Expiration.** The following provisions shall apply to any termination or expiration of this Agreement; *provided, however,* that the termination or expiration of this Agreement for any reason shall not affect any obligations accrued or amounts owed hereunder before the date of such expiration or termination:

9.3.1 Provider shall cease all activities under this Agreement, but shall (unless otherwise directed by Supplier) fulfill all Supplier orders submitted prior to the effective date of termination;

9.3.2 Each Party shall, as requested by the other Party, return to the other Party, or provide a certificate of one of its executive officers as to the destruction of all Confidential Information, and all summaries, compendiums, reports, analyses and other materials prepared with the use of such Confidential Information, *provided, however* that each Party's legal counsel may retain one (1) archival copy of such Confidential Information, which shall, notwithstanding Section 8.0, remain subject to the restrictions set forth in this Agreement until such time that such Confidential Information meets one or more of the exceptions set forth in Section 8.2.

9.3.3 All orders for Products received after the effective date of termination will be promptly referred to Supplier;

9.3.4 Each Party will cease holding itself out as being in any way connected with the other Party;

9.3.5 The Parties shall cooperate to prepare a reasonably detailed, written transition and wind-down plan to coordinate an orderly cessation of the activities provided for under this Agreement; and

9.3.6 Other than with respect to matters in dispute, Provider shall complete a final financial reconciliation and provide an invoice for the same. As applicable, following such financial reconciliation Supplier shall pay any undisputed amounts invoiced in accordance with Section 6.1.

ARTICLE X: LIMITATION OF LIABILITY AND INDEMNIFICATION

10.0 Provider shall indemnify, defend, and hold harmless Supplier, its Affiliates, and their respective directors, officers, members, employees, agents, representatives, and insurers (the "**Supplier Indemnitees**") from and against all Claims to the extent arising directly or indirectly as a result of the (i) negligence or willful or wrongful acts or omissions of any Provider Indemnitee, (ii) breach by Provider of any of Provider's representations or warranties under this Agreement, or (iii) the failure or alleged failure of Provider to comply with Applicable Laws.

10.1 Supplier shall promptly notify Provider in writing of any Claim for which indemnity may be sought and will thereafter keep Provider reasonably informed with respect thereto, provided that failure to give Provider prompt notice as provided herein shall not relieve Provider of its obligations hereunder except to the extent, if any, it shall have been materially prejudiced thereby. Supplier shall fully cooperate with Provider and shall permit Provider, subject to Section 10.4, to conduct and control the defense and disposition of such Claims. Provider shall promptly assume, at its cost and expense, the sole defense of such Claim through counsel selected by Provider and reasonably acceptable to Supplier , provided that in the event that Provider does not assume the defense on a timely basis or reasonably maintain the defense, then, without prejudice to any other rights and remedies available to Supplier under this Agreement, Supplier may take over such defense with counsel of its choosing at Provider's cost and expense. If the Provider assumes the defense of any Claim as provided in this Section 10.1, Supplier shall provide reasonable assistance to Provider in its efforts to investigate and defend the Claim, including, without limitation, providing reasonable access to the indemnifying party to such documentary evidence and witnesses as are available to Supplier. In the event that a conflict of interest arises, which, under applicable principles of legal ethics prevents a single legal counsel from representing both Supplier and Provider, Supplier may take over its defense with counsel of its choosing at Provider's cost and expense.

10.2 Supplier shall indemnify, defend and hold harmless Provider, its Affiliates and their respective directors, officers, employees and representatives from and against all Claims, whatsoever to the extent arising directly or indirectly as a result of the negligence or willful or wrongful acts or omissions of Supplier, an unremedied breach by Supplier of any of its representations or warranties under this Agreement, or the failure or alleged failure of Supplier to comply with Applicable Laws. Supplier shall also indemnify, defend and hold harmless Provider and its shareholders, officers, directors, employees, parent corporation, Affiliates, and agents from and against any and all Claims that may arise from injury (or death) to a patient resulting from the purchase, use, consumption or recall of any Product, whether or not involving a defect in a Product, its labeling or packaging, or any claim that the Supplier Products or their packaging infringes the patent, copyright, trademark, trade secret or other intellectual property of any other person or entity without regard to the negligence or willful or wrongful acts of any Provider Indemnitee, "except to the extent such Claim results from any gross negligence, or willful misconduct by or on behalf of Provider on or after title to such Products passes to Provider.

10.3 Provider shall promptly notify Supplier in writing of any Claim for which indemnity may be sought and will thereafter keep Supplier reasonably informed with respect thereto, provided that failure to give Supplier prompt notice as provided herein shall not relieve Supplier of its obligations hereunder except to the extent, if any, it shall have been materially prejudiced thereby. Provider shall fully cooperate with Supplier and shall permit Supplier, subject to Section 10.4, to conduct and control the defense and disposition of such Claims. Supplier shall promptly assume, at its cost and expense, the sole defense of such Claim through counsel selected by Supplier and reasonably acceptable to Provider, provided that in the event that Supplier does not assume the defense on a timely basis or reasonably maintain the defense, then, without prejudice to any other rights and remedies available to Provider under this Agreement, Provider may take over such defense with counsel of its choosing at Supplier's cost and expense. If Supplier assumes the defense of any Claim as provided in this Section 10.3, Provider shall provide reasonable assistance to Supplier in its efforts to investigate and defend the Claim, including, without limitation, providing reasonable access to the indemnifying party to such documentary evidence and witnesses as are available to Provider. In the event that a conflict of interest arises, which, under applicable principles of legal ethics prevents a single legal counsel from representing both Supplier and Provider; Provider may take over its defense with counsel of its choosing at Supplier's cost and expense.

10.4 Neither Party shall, without the written consent of the other Party (such consent not to be unreasonably delayed, conditioned, or withheld): (i) settle or compromise any Claim without including as an unconditional term thereof the giving of an unconditional release with respect to all liability under such Claim, or consent to the entry of any judgment which does not include a dismissal with prejudice of the indemnified party and indemnifying party; (ii) settle or compromise any Claim in any manner that may adversely affect the other Party other than as a result of money damages or other monetary payments; or (iii) settle or compromise any Claim in any manner that includes an admission of fault or liability on the part of the other Party.

10.5 **Limitation of Liability**.

10.5.1 **EXCEPT IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER FOR ANY: (i) LOST PROFITS; (ii) LOSS OF PROSPECTIVE COMPENSATION OR UNJUST ENRICHMENT; (iii) GOODWILL OR LOSS THEREOF; OR (iv) CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND OR CHARACTER, WHETHER ARISING IN TORT, CONTRACT, INDEMNITY, STRICT LIABILITY OR ANY OTHER THEORY OF RECOVERY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE A MATERIAL CONSIDERATION FOR THEIR ENTRY INTO THIS AGREEMENT.**

10.6 **Maximum Liability**. Provider's total aggregate liability to Supplier arising out of or in connection with this Agreement and the Services, from any and all causes, whether based on contract, tort (including negligence), strict liability, or any other cause of action, including claims for indemnification under Section 10.1, shall in no event exceed the aggregate of the total fees paid by to Supplier hereunder.

ARTICLE XI: INSURANCE

11.0 **Supplier Insurance**. Supplier agrees that during the Term it shall carry and maintain in full force and effect at its own expense the following insurance policies with insurers currently rated A-VII or better by A.M. Best:

11.0.1 Workers Compensation and Occupational Disease insurance with statutory coverage and limits pursuant to the laws, rules and regulations of the jurisdictions in which any employee or agent of Supplier performs work under this Agreement;

11.0.2 Employers Liability insurance with minimum limits of **[***]** (USD $**[***]**) per accident or disease;

11.0.3 Commercial General Liability insurance including coverage for premises and operations, completed operations, contractual liability, bodily injury, property damage, and personal injury and advertising injury with a minimum policy limit (taking into consideration CGL and any umbrella coverages sitting over the CGL combined) of **[***]** (USD $5**[***]**) per occurrence and **[***]** (USD $**[***]**) in the annual aggregate;

11.0.4 Products Liability insurance including bodily injury and property damage for all products and work supplied under this Agreement with a minimum policy limit of **[***]** (USD $**[***]**) per occurrence and **[***]** (USD $**[***]**) in the annual aggregate, to include worldwide coverage for worldwide lawsuits;

11.0.5 Commercial Umbrella Liability insurance which will provide excess, follow-form coverage above all liability limits required herein with per occurrence and annual aggregate limits of at least **[***]** (USD $**[***]**);

11.0.6 Professional Errors and Omissions liability insurance with coverage for the performance or failure to perform any professional services provided by Supplier under this Agreement and including but not limited to coverage for errors, omissions, wrongful acts, negligent acts, design defects, software bugs, defective code, infringement of copyrights and trademarks and with limits of **[***]** (USD $**[***]**) per claim and **[***]** (USD $**[***]**) in the annual aggregate;

11.0.6 Information Security and Privacy Liability insurance including but not limited to coverage for privacy and network security liability: 1st and 3rd party liability, wrongful disclosure of data, disclosure of HIPAA protected health information; breach of security, downtime, Identification theft, web hosting (if applicable), credit monitoring service and with a minimum policy **limit of [***]** (USD $**[***]**) each occurrence or claim and **[***]** (USD $**[***]**) in the annual aggregate; and, such **other insurance as such** Party may reasonably deem necessary to ensure the performance of its obligations under this Agreement;

11.0.7 Provider shall maintain Employee Dishonesty and Computer Fraud insurance, (including an endorsement to include third party theft or Provider's employees' theft of Products) with coverage for loss arising out of or in connection with any fraudulent or dishonest acts committed by its employees or agents, acting alone or in collusion with others, in an amount of at least **[***]** (USD $**[***]**); and, such other insurance as Provider may reasonably deem necessary to ensure the performance of its obligations under this Agreement.

11.1 **Certificates of Insurance and Additional Insureds**. Supplier agrees to furnish Provider with certificates of insurance for all required policies of insurance. Supplier shall cause insurer(s) to endorse all insurance policies to: (i) name Provider and Affiliates as Additional Named Insureds; and (ii) endorse all required insurance policies to give Provider at least thirty (30) days prior written notice of any cancellation or termination in coverage prior to policy expiration. Supplier shall use best efforts to provide Provider with thirty (30) days advance written notice of any material changes of the required insurance coverage.

11.2 **Claims-Made Policies**. If any insurance policy is a "claims-made" policy, then such claims made policy shall be kept in force for not less than five (5) Years immediately following termination or expiration of this Agreement, or a five (5) Year "tail" policy shall be purchased including the same or broader coverage for any claim or circumstance occurring or taking place during the Term of this Agreement without regard to whether the claim is brought during the term of the insurance policy.

11.3 **Supplier's Policy is Primary Cover**. All insurance policies afforded by Supplier and Supplier's subcontractors shall be primary to and not contributing to any other insurance, self-insurance or captive insurance maintained by Provider or its Affiliates.

11.4 **Subrogation Waiver**. Supplier shall cause each insurer of coverage required under this Article 11 to endorse each insurance policy to waive its subrogation rights against Provider and its Affiliates.

11.5 **Separation of Insureds**. Supplier shall include a separation of insured provisions under the Commercial General Liability, Excess and/or Umbrella Liability and Business Auto Liability insurance policies with no cross liability or cross suits exclusions.

11.6 **Satisfaction of Limits**. The limits required under this Agreement can be satisfied through any combination of primary and umbrella/excess insurance.

11.7 **No Relief from Obligations**. Approval or acceptance of any of Supplier's insurance policies shall not relieve Supplier of any obligations contained herein, including obligations as part of this Agreement, whether claims are within, outside or in excess of applicable policy limits, and regardless of solvency or insolvency of the insurer(s) that issues such coverage. Such insurance shall not preclude either Party from taking any actions that are available to it under any provision of this Agreement or otherwise under Applicable Laws. The failure to provide certificates in accordance with this Article 11 will not release Supplier in any manner of any liability arising under this Agreement.

ARTICLE XII: FORCE MAJEURE

12.0 **Force Majeure.** Other than with respect to any obligation to make payments hereunder, neither Party hereto shall be in default hereunder or liable for any loss or by reason of any failure and/or delay in the performance of any obligation under this Agreement where such failure or delay demonstrably arises out of any cause beyond the reasonable control of the Party claiming relief, including, without limitation, storms, floods, other acts of nature, fires, explosions, shortage of raw materials, riots, war or civil disturbance, national strikes or other industry wide labor unrest, embargoes and other Government actions or regulations that would prohibit the supply or distribution of Products or from performing any other aspects of a Party's obligations hereunder, delays in transportation, inability to obtain necessary labor, supplies, or manufacturing facilities. The Party claiming to be delayed by reason of an event of Force Majeure shall promptly notify the other Party in writing of any actual or anticipated delays and take all necessary steps to avoid, overcome or end delays without additional cost to the other Party. The notice shall contain particulars as to the nature of the claimed event of Force Majeure, the date of commencement of the event and the anticipated date on which the event is anticipated to cease. The Party claiming to be delayed by reason of an event of Force Majeure shall take all reasonable steps to mitigate the effect of delays. Such steps shall include advanced planning and contingency planning.

ARTICLE XIII: NOTICES

13.0 All notices pertaining to this Agreement shall be delivered in person, sent by certified mail, delivered by air courier to a Party at the address shown in this Agreement, or such other address as a Party may notify the other Party from time to time. Notices delivered in person prior to 4:00 PM, recipient's time, Monday through Friday (legal holidays excepted), shall be deemed received on the day delivered or dispatched. Notices sent via overnight air courier shall be deemed to have been received on the business day of receipt; *provided, however*, that if such day falls on a weekend or legal holiday, receipt shall be deemed to occur on the next business day. Notices may also be transmitted electronically between the Parties provided that proper arrangements are made in advance to facilitate such communications and provide for their security and verification.

If to Provider:

McKesson Specialty Care Distribution Corporation
10101 Woodloch Forest Drive
The Woodlands, TX 77380
Attention: General Counsel
Telephone: (832) 601-8766

With a copy, which shall not constitute notice, to:
McKesson Corporation
One Post Street
San Francisco, CA 94104
Attention: General Counsel
Telephone: 415-984-9000

If to Supplier:

Metuchen Pharmaceuticals, LLC
4400 Route 9 South, Ste 1000
Freehold, NJ 07728
Attention: Keith F. Lavan, Chief Financial Officer
Telephone: (732) 761-8283

With a copy, which shall not constitute notice, to:
Metuchen Pharmaceuticals, LLC
4400 Route 9 South, Ste 1000
Freehold, NJ 07728
Attention: Greg Ford, President and CEO

ARTICLE XIV: GENERAL PROVISIONS

14.0 **Entire Agreement.** This Agreement, together with the Exhibits and all written amendments, modifications and supplements thereto constitute the entire agreement between the Parties and all prior negotiations, proposals and writings pertaining to this Agreement or the subject matter thereof, are hereby superseded. No modification of this Agreement will be effective unless in writing and signed by both Parties.

14.1 **Compliance with Anti-Corruption Statutes and Conventions**. Each Party hereto shall comply with and shall not take any action which would violate or cause the other Party to violate the provisions of: (i) the United States Foreign Corrupt Practices Act of 1977; or (ii) The Bribery Act 2010 (c.23) of the United Kingdom; or (iii) the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Co-operation and Development. Neither Party nor any of its Affiliates or their respective directors, officers, shareholders, employees or agents shall make or offer, in respect of the performance of the Services, any loan, gift or other payment, directly or indirectly, whether in cash or in kind, for the use or benefit of a Foreign Official for the purposes of influencing any act or decision of such Foreign Official in its official capacity, or inducing such Foreign Official to do or omit to do any act in order to obtain or retain business or otherwise to secure any improper advantage The term "**Foreign Official**" shall mean (i) any officer or employee of a foreign government, department (whether executive, legislative, judicial or administrative), agency or instrumentality of such foreign government, including a regional governmental body or a government-owned business, or of a public international organization; (ii) any person acting in an official capacity for or on behalf of such foreign government, department, agency, instrumentality, or public international organization; (iii) any candidate for a foreign political office; or (iv) any foreign political party. Each Party shall indemnify, defend and hold the other harmless from any and all liabilities, costs, penalties, fines, and attorney's fees, costs associated with any such violations.

14.2 **Know Your Customer Program**. Where required by Applicable Law or, upon mutual agreement by the Parties, as may be mandated by Prudent Industry Practices, Provider may require that Supplier and/or Customers participate in a detailed customer identification program while establishing a customer relationship (the "**KYC Program**") requiring the verification of necessary documents for identification purposes and to conduct any appropriate due diligence based on the risk profile of the Customer or the Supplier including, without limitation, the following: (a) the legal status of the relevant entities shall be verified with reference to relevant documents for creation of each such entity; (b) verification of the authority of the relevant representatives of the entity; (c) verification of the ownership and control structure of the Customer and/or the Supplier and determine who are the natural persons who ultimately control the entity. The KYC Program may also involve the ongoing monitoring of financial and procurement transactions.

14.3 **Severability**. In the event that any provision of the Agreement or the documents and instruments contemplated hereby is held by court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, unless narrowed by construction, the Agreement and the documents and instruments contemplated hereby shall be construed as if such invalid, prohibited or unenforceable provision had been more narrowly drawn so as not to be invalid, prohibited or unenforceable, or if such language cannot be drawn narrowly enough to satisfy such court, the court making any such determination shall have the power to modify in scope, duration or otherwise any such provision, but only to the extent necessary to make such provision or provisions enforceable in such court, and such provision then shall be applicable in such modified form. No narrowed construction, court modification, or invalidation of any provision of the Agreement and the documents and instruments contemplated hereby shall affect the construction, validity, or enforceability of such provision or of the Agreement and the documents and instruments contemplated hereby in any jurisdiction other than that upon which the decision of the court of competent jurisdiction shall govern.

14.4 **Assignment**. This Agreement may not be assigned to any person, firm, partnership, corporation or other entity (including by operation of law, judicial process or otherwise) without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement upon written notice to the other Party to any of its Affiliates, but such assignment will not operate to discharge or otherwise relieve any assigning Party from its obligations hereunder.

14.5 **Counterparts**. This Agreement may be executed in any number of counterparts and by each of the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signatures of the Parties transmitted by electronic means shall be deemed to be their original signatures for all purposes.

14.6 **Not For Benefit Of Third Parties**. This Agreement and each and every provision hereof and thereof are for the exclusive benefit of the Parties hereto and not for the benefit of any third party.

14.7 **Applicable Law**. This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal, substantive laws of the State of Delaware applicable to contracts made in that State.

14.8 **Waiver**. Neither Party's failure to insist on performance of any term, condition, or instruction nor failure to exercise any right or privilege or its waiver of any breach, shall thereafter be construed to constitute a waiver of such term, condition, instruction, right or privilege. No consent or waiver, expressed or implied, by a Party to the performance by the other Party or of any breach or default by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Party of the same or any other obligations of such other Party hereunder. The giving of consent by a Party in any one instance shall not limit or waive the necessity to obtain such Party's consent in any future instance. No waiver of any rights under this Agreement shall be binding unless it is in writing and signed by the Party waiving such rights.

14.9 **Dispute Resolution.**

14.9.1 **Administrative Committee Procedure**. If any dispute arises on any matters concerning this Agreement, either Party may initiate the dispute resolution procedures of this Section 14.9 by providing written notice to the other Party of the existence and nature of the dispute. The dispute shall be referred to the designated representatives of each Party provided for herein who shall attempt to resolve the dispute and if they are unable to do so, it will then be referred to senior management of both Parties. To aid the negotiation by the Parties' senior managers, the representatives shall promptly prepare and exchange memoranda stating the issues in dispute and their positions, summarizing the negotiations which have taken place and attaching relevant documents. If such senior managers can resolve the dispute, such resolution shall be reported in writing to and shall be binding upon the Parties. If such senior managers cannot resolve the dispute within fifteen (15) days, or such other time as the representatives may mutually agree, then either Party may seek legal or equitable resolution or relief with respect to such dispute. Notwithstanding the foregoing, either Party shall be entitled to seek equitable relief (including without limitation injunctive relief), without the necessity of first complying with the foregoing requirements set forth in this Section 14.9.1. Such equitable relief shall be in addition to and not in lieu of any other relief available at law or in equity.

14.9.2 **Judicial Process**. The procedures specified in this Section 14.9 shall be the sole and exclusive procedures for the resolution of claims, disputes and controversies between the Parties arising out of or relating to this Agreement or the breach thereof.

14.10.3 **Consent to Jurisdiction**. **EACH OF THE PARTIES HEREBY AGREES THAT ANY ACTION REFERRED TO JUDICIAL PROCESS UNDER OR RELATING TO THIS AGREEMENT SHALL BE INSTITUTED IN THE STATE OR FEDERAL COURTS THEN SITTING IN THE BOROUGH OF MANHATTAN IN THE COUNTY AND STATE OF NEW YORK AND IN NO OTHER FORUM AND EACH OF THE PARTIES HEREBY IRREVOCABLY CONSENTS TO SUCH JURISDICTION AND IRREVOCABLY WAIVES ANY OBJECTIONS, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. THE FOREGOING IS WITHOUT PREJUDICE TO THE RIGHT OF ANY PREVAILING PARTY TO SEEK ENFORCEMENT OF ANY JUDGMENT RENDERED IN A COURT IN ANY JURISDICTION WHERE THE LOSING PARTY OR ITS PROPERTY MAY BE LOCATED AND WITHOUT PREJUDICE TO THE RIGHT OF ANY PARTY TO SEEK PRELIMINARY EQUITABLE RELIEF IN ANY COURT OF COMPETENT JURISDICTION.**

14.9.4 **Obligations to Pay Charges**. Pending the resolution of the dispute, each Party shall continue to perform the applicable provisions of this Agreement and each Party shall continue to pay all charges required in accordance with the applicable provisions of this Agreement.

14.11 **Amounts.** All amounts of money in this Agreement are denominated in United States of America Dollars.

14.12 **Further Assurances.** Each Party hereto agrees that they will without further consideration execute and deliver such other documents and take such other actions as may be reasonably requested by the other Party to consummate more effectively the transactions and agreements contemplated hereby.

14.13 **Headings and Exhibits**. Any headings used herein are for convenience in reference only and are not a part of this Agreement, nor shall they in any way affect the interpretation hereof. All exhibits attached hereto are incorporated by reference just as if they were set forth at length in the text of this Agreement.

14.14 **Construction**. Each Party has participated to a significant degree in the preparation of this Agreement. No provision of this Agreement shall be construed against any Party on the basis of that Party having been, or been deemed, the "drafter."

14.15 **Survival.** The provisions of this Agreement which by their nature or terms are intended to survive the termination, cancellation, completion or expiration of this Agreement shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

Signature page follows

IN WITNESS WHEREOF, Supplier and Provider have caused this instrument to be executed by their duly authorized employees, as of the day and Year first above written.

PROVIDER	**SUPPLIER**
MCKESSON SPECIALTY CARE DISTRIBUTION CORPORATION	**METUCHEN PHARMACEUTICALS, LLC**
By: /s/ Layne H Martin	By: /s/ J. Gregory Ford
Printed Name: Layne H Martin	Printed Name: J Gregory Ford
Date: 11/29/2018	Date: Nov 29, 2018
Title: Vice President / General Manager	Title: President and CEO

EXHIBIT A: PRODUCTS

Stendra (Avanafil)

EXHIBIT B: SERVICES

Initial setup:

- Dedicated Six Sigma project manager
- Train 3PL customer care on the Metuchen Pharmaceuticals program and triage points
- Train the finance team on terms with Metuchen Pharmaceuticals customers and current collections history
- Implement current contracts into the chargeback system if necessary
- Implement IT systems for EDI integration with customers and data reporting integration with Metuchen Pharmaceuticals
- Develop SAP environment and a SAP serialization solution

Program Management

- Senior management program oversight – single point of contact
- Chargeback oversight
- Data and portal access
- Maintenance of reporting system

Customer Care

- Product inquiries
- Order placement
- Call triage
- Manage customer relationships
- Account setup and maintenance
- License verification

Operations

- Product receipt, verification and put away
- Product storage
- Pick, pack and ship
- Inventory management
- Regularly scheduled cycle counts

Financial Services

- Invoicing (electronic and paper)
- Collection management
- Management of established credit limits
- Accounts receivable
- Reconciliation reporting
- Cash posting
- Credit and debit memo processing

Contract/Chargeback Processing

- Manual and Electronic chargeback processing
- Contract management
- Customer notification for contract changes and updates
- Metuchen Pharmaceuticals maintains contract eligibility
- Metuchen Pharmaceuticals provides to RxCrossroads by McKesson for market notification

Returns Processing

- Returned goods authorization
- Processing of requested returns

Product Destruction Processing

Freight

Packaging Supplies

EXHIBIT C: FEES AND PRICES

Services	Fee for Service Unit Cost	
Program Implementation		
One time start-up fee	**$ [***]**	**One-time fee**
DSCSA Inbound Serialization Program Implementation	**$ [***]**	**One-time fee**
Monthly Fixed Fees		
Monthly Management Fee		
Program Management:		
- Daily operations point of contact		
- Weekly operations meeting and follow up		
- Resolution of escalations	$ [***]	per month
- Project and process change management		
- KPI reporting and review		
Quality and Regulatory oversight		
Senior Management oversight and QBRs		
ExegisTM reporting with unlimited users		
DSCSA Monthly Management Fee	$ [***]	per month
Title Model Monthly Management Fee	$ [***]	per month (if needed)
Warehousing		
Pick, Pack & Ship		
(24 hr order delivery);		Same Day Shipment Cutoff
48 hr receipt to delivery		5:00 PM EST for parcel air
Receiving		
Receipt and Put-Away – Ambient Product	$ [***]	per put away per pallet
Receipt and Put-Away – Ambient Shipping Supplies	$ [***]	per puta way per pallet
Storage		
Storage – Ambient Product	$ [***]	per pallet per month
Storage – Ambient Shipping Supplies	$ [***]	per pallet per month
Pick, Pack & Ship		
Shipment Fee	$ [***]	per shipment
Title Model Shipment Surcharge	$ [***]	per title shipment (if needed)
Line Fee	$ [***]	per line
Ambient Product		
Pick & Pack Charge – Per Carton (Each)	$ [***]	per carton
Pick & Pack Charge – Per Case	$ [***]	per full case**

Pick & Pack Charge – Per Pallet	$ [***]	per full pallet**
Overpack Fee - Insulated Shipper if needed. (labor only, does not include supplies)	$ [***]	per insulated overpacked container
**Pick & pack charges include serial number scanning, provided aggregation exists at the case and pallet level. Otherwise the pick fee will be assessed at the level (case/each) that can be scanned.		
Order Management - Customer Service		
Order Processing - Manual Entry or Intervention	$ [***]	per order
Order Processing - Electronic	$ [***]	per order
New Customer Setup	$ [***]	per ship to customer
License Verification	$ [***]	per verification
AOR Reconciliation Fee	$ [***]	per sample order
International Order Preparation (includes Puerto Rico)	$ [***]	
Emergency Order Fee (After Hours, Weekends)	$ [***]	per emergency order
Invoicing		
Invoices, including Credit and Debit Memos	$ [***]	per invoice
Chargeback Processing		
Chargebacks - EDI	$ [***]	per chargeback line
Chargebacks - Manual	$ [***]	per chargeback line
Returns Processing		
Returns Processing Fee– Per Return	$ [***]	per return
Returns Processing Fee– Per Unit	$ [***]	per unit
Information Technology		
Setup of EDI Transactions with key customers (EDI 810, 844, 849, 850, 852, 856, 867)	$ [***]	per national customer (i.e. all ABC branches count as one wholesaler)
Custom IT development (i.e. reports, interfaces)	$ [***]	per hour
Recall Management		
See hourly rates		
A/R & Credit Management		
Included in Monthly Management Fee		
Credit Verification	[***]	
AP Management		
Freight, packaging and destruction vendor AP management	[***]	
Financial Reporting		
Standard web portal reporting Included in		
Monthly Management Fee		
Hourly Labor Rates for Special Projects		
Warehouse	$ [***]	per hour
Office	$ [***]	per hour
QA & Management	$ [***]	per hour

EXHIBIT D: RETURNED GOODS POLICY

(Exhibit D to be updated when Returns Goods Policy is defined with Provider)

EXHIBIT E: PACKING AND SHIPPING REQUIREMENTS

(Exhibit E to be updated prior to launch)

EXHIBIT F CHARGEBACK PROCESSING PROTOCOL

(Exhibit F to be updated prior to launch)

EXHIBIT G PROVIDER DISTRIBUTION CENTER

RxCrossroads Acquisition Company
5101 Jeff Commerce Drive
Louisville, KY 40219

Exhibit 99.1

NEUROTROPE, INC.
1185 AVENUE OF THE AMERICAS, 3RD FLOOR
NEW YORK, NY 10036

VOTE BY INTERNET
Before The Meeting - Go to **www.proxyvote.com**

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 p.m. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

During The Meeting - Go to **www.virtualshareholdermeeting.com/NTRP2020SM**

You may attend the meeting via the Internet and vote during the meeting. Have the information that is printed in the box marked by the arrow available and follow the instructions.

VOTE BY PHONE - 1-800-690-6903
Use any touch-tone telephone to transmit your voting instructions up until 11:59 p.m. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL
Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

D26002-Z78413 KEEP THIS PORTION FOR YOUR RECORDS

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED. DETACH AND RETURN THIS PORTION ONLY

NEUROTROPE, INC.

The Board of Directors of Neurotrope, Inc. (the "Board of Directors") recommends you vote FOR Proposals 1-4, FOR each of the nominees for Director and FOR Proposals 6-8.

		For	Against	Abstain
1.	Proposal to approve the Agreement and Plan of Merger by and among Neurotrope, Inc. ("Neurotrope"), Petros Pharmaceuticals, Inc. ("Petros"), PM Merger Sub 1, LLC, PN Merger Sub 2 Inc., and Metuchen Pharmaceuticals LLC ("Metuchen"), as amended (the "Merger Agreement"), and the transactions contemplated thereby, including the issuance of Petros capital stock to Neurotrope stockholders and Metuchen securityholders:	☐	☐	☐
2.	Proposal to consider and approve a spin-off transaction (the "Spin-Off") whereby (i) any cash in excess of $20,000,000, subject to adjustment as provided for in the Merger Agreement, and all of the operating assets and liabilities of Neurotrope not retained by Neurotrope in connection with the Mergers (as defined in the Merger Agreement) will be contributed to a wholly-owned subsidiary of Neurotrope, referred to as Neurotrope BioSciences, Inc. ("Neurotrope SpinCo") and (ii) holders of record of Neurotrope common stock and certain warrants as of a record date to be determined and announced promptly following the Special Meeting (the "Spin-Off Record Date") will receive a pro rata distribution of one share of Neurotrope SpinCo's common stock for each share of Neurotrope common stock held or underlying certain warrants held at the close of business on the Spin-Off Record Date, contingent upon the consummation of the Mergers. The proceeds of any warrant exercises occurring between the date the Merger Agreement was signed and the date the Mergers under the Merger Agreement are completed will be split 80% to Petros and 20% to the spun-off entity, subject to adjustment as provided in the Merger Agreement:	☐	☐	☐
3.	Proposal to approve the Petros Pharmaceuticals, Inc. 2020 Omnibus Incentive Compensation Plan:	☐	☐	☐
4.	Proposal to approve, on an advisory basis, the golden parachute compensation that may be paid or become payable to Neurotrope's named executive officers as a result of the Mergers:	☐	☐	☐

		For	Withhold
5.	Proposal to elect the following directors of Neurotrope to serve one-year terms expiring in 2021 (provided, however, that if the Mergers are completed, the Board of Directors of Petros will be reconstituted as provided in the Merger Agreement):		
5a.	Dr. Charles S. Ryan	☐	☐
5b.	Joshua N. Silverman	☐	☐
5c.	William S. Singer	☐	☐
5d.	Bruce T. Bernstein	☐	☐
5e.	George Perry	☐	☐
5f.	Jonathan L. Schechter	☐	☐
5g.	Ivan P. Gergel	☐	☐

		For	Against	Abstain
6.	Proposal to ratify the appointment of Friedman LLP as Neurotrope's independent registered public accounting firm for the fiscal year ending December 31, 2020:	☐	☐	☐
7.	Proposal to approve by an advisory vote the compensation of Neurotrope's named executive officers as disclosed in the proxy statement:	☐	☐	☐
8.	Proposal to consider and vote upon an adjournment of the Special Meeting, if necessary, to solicit additional proxies if there are not sufficient votes in favor of one or more proposals presented to the stockholders:	☐	☐	☐

Please sign exactly as name(s) appears hereon. Joint owners should each sign. When signing as attorney, executor, administrator, trustee or guardian, please give full title as such.

Signature [PLEASE SIGN WITHIN BOX] Date

Signature (Joint Owners) Date

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting:
The Notice and Proxy Statement is available at www.proxyvote.com.

D26003-Z78413

NEUROTROPE, INC.
www.virtualshareholdermeeting.com/NTRP2020SM

PROXY FOR SPECIAL MEETING OF STOCKHOLDERS
NOVEMBER , 2020
11:00 A.M. EASTERN TIME

NEUROTROPE, INC.'S BOARD OF DIRECTORS SOLICITS THIS PROXY

The undersigned, revoking any previous proxies relating to these shares, hereby appoints Mr. Joshua N. Silverman and Mr. Robert Weinstein, and each of them (with full power to act alone), the attorneys and proxies of the undersigned, with power of substitution to each, to vote all shares of the common stock of Neurotrope, Inc. registered in the name provided in this proxy which the undersigned is entitled to vote at the Special Meeting of Stockholders (the "Special Meeting"), to be held via live audio webcast at www.virtualshareholdermeeting.com/NTRP2020SM, and at any adjournments of the meeting, with all the powers the undersigned would have if personally present at the meeting. Without limiting the general authorization given by this proxy, the proxies are, and each of them is, instructed to vote or act as follows on the proposals set forth in this proxy.

In their discretion the proxies are authorized to vote upon such other matters as may properly come before the meeting or any adjournments of the meeting. If you wish to vote by telephone or Internet, please read the directions on the reverse side.

Shares represented by this proxy will be voted as directed by the stockholder. If no such directions are indicated, the proxies will vote FOR the Election of each nominee for Director and FOR Proposals 1, 2, 3, 4, 6, 7 and 8.

The undersigned acknowledges receipt of the Notice of Special Meeting of Stockholders and the accompanying proxy statement.