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

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): July 17, 2017**

**IMPRIMIS PHARMACEUTICALS, INC.**

(Exact name of registrant as specified in its charter)

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

**001-35814**  
(Commission  
File Number)

**45-0567010**  
(IRS Employer  
Identification No.)

**12264 El Camino Real, Suite 350**  
**San Diego, CA**  
(Address of principal executive offices)

**92130**  
(Zip Code)

Registrant's telephone number, including area code: **(858) 704-4040**

**N/A**

(Former name or former address if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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## **Item 1.01 Entry into a Material Definitive Agreement.**

### Loan Agreement

On July 19, 2017, Imprimis Pharmaceuticals, Inc. (the “Company”) entered into a term loan and security agreement in the principal amount of \$16,000,000 (the “Loan Agreement” or “SWK Loan”) with SWK Funding LLC and its partners (the “Lender”), as lender and collateral agent. The Loan Agreement was fully funded at closing with a five year term, however, such term may be reduced to four years if certain revenue requirements are not achieved. Concurrently with the funding, the Company utilized a portion of the SWK Loan funds as full payment to an affiliate of Life Sciences Alternative Funding, LLC (“LSAF”) to terminate all amounts due to LSAF in connection with the existing term loan and security agreements, as amended, originally entered into between the Company and LSAF on May 11, 2015 (the “LSAF Loan”), which loan had a principal balance of \$12,120,310 at the time of final payment. The Company intends to use the balance of proceeds from the SWK Loan after final payments to LSAF for working capital and general corporate purposes.

The SWK Loan bears interest at a variable rate equal to the three-month London Inter-Bank Offered Rate (subject to a minimum of one and one-half percent (1.50%) and maximum of three percent (3.00%)), plus an applicable margin of ten and one-half percent (10.50%). The Loan Agreement permits the Company to pay interest only on the principal amount loaned thereunder for the first six payments (payments are due on a quarterly basis), which interest-only period may be reduced to four payments if the Company does not meet certain minimum revenue requirements. Following the interest-only period, the Company will be required to pay interest, plus repayments of the principal amount loaned under the Loan Agreement, in quarterly payments, which shall not exceed \$750,000 per quarter. All amounts owed under the Loan Agreement, including a final fee equal to five percent (5%) of the aggregate principal amount loaned thereunder, will be due and payable on July 19, 2022, or if certain revenue requirements are not met, July 19, 2021. The Company may elect to prepay all, but not less than all, of the amounts owed under the Loan Agreement prior to the maturity date at any time after July 19, 2019. If certain revenue requirements are not met, the Company may be allowed to prepay the loan from July 19, 2018 to July 19, 2019, provided that a prepayment fee equal to six percent (6%) of the principal amount of the loan will also be due. The Company is also obligated under the Loan Agreement to pay for certain expenses incurred by the Lender through and after the date of the Loan Agreement, including certain fees and expenses relating to the preparation and administration of the Loan Agreement.

Pursuant to the terms of the Loan Agreement, the Company is bound by certain affirmative covenants setting forth actions that the Company must take during the term of the Loan Agreement, including, among others, certain information delivery requirements, obligations to maintain certain insurance and certain notice requirements. Additionally, the Company is bound by certain negative covenants setting forth actions that the Company may not take during the term of the Loan Agreement without the Lender’s consent, including, among others, disposing of certain Company (or its subsidiaries) business or property, incurring certain additional indebtedness, entering into certain merger, acquisition or change of control transactions, paying certain dividends or distributions on or repurchasing any of the Company’s capital stock, or incurring any lien or other encumbrance on Company (or its subsidiaries) assets, subject to certain permitted exceptions. Upon the occurrence of an event of default under the Loan Agreement (subject to cure periods for certain events of default), all amounts owed by the Company thereunder may be declared immediately due and payable by the Lender. Events of default include, among others, the following: the occurrence of certain bankruptcy events; the failure to make payments under the Loan Agreement when due; the occurrence of a material adverse change in the business, operations or condition of the Company or any of its subsidiaries; the breach by the Company or its subsidiaries of certain of their material agreements with third parties; the initiation of certain regulatory enforcement actions against the Company or its subsidiaries; the rendering of certain types of fines or judgments against the Company or its subsidiaries; any breach by the Company or its subsidiaries of any covenant (subject to cure periods for certain covenants) made in the Loan Agreement; and the failure of any representation or warranty made by the Company or its subsidiaries in connection with the Loan Agreement to be correct in any material respect when made.

The Company’s obligations under the Loan Agreement are guaranteed on a secured basis by its wholly owned subsidiaries, ImprimisRx NJ, LLC, Imprimis NJOF, LLC and ImprimisRx CA, Inc. Each of the Company and its subsidiaries has granted the Lender a security interest in substantially all of its personal property, rights and assets, including intellectual property rights and equity ownership, to secure the payment of all amounts owed under the Loan Agreement.

The Company issued a press release announcing the Loan Agreement on July 20, 2017, which is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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The foregoing is only a brief description of the Loan Agreement, does not purport to be a complete description of the rights and obligations of the parties thereunder and is qualified in its entirety by reference to the full text of the document, which is filed as Exhibits 10.1 to this Current Report on Form 8-K and is incorporated herein by reference.

### Lender Warrant

In connection with the Loan Agreement, the Company has issued to the Lender warrants to purchase up to 415,586 shares of the Company's common stock (the "Lender Warrants"). The Lender Warrants are exercisable immediately, have an exercise price of \$3.08 per share and maintain a term of 7 years. The Lender Warrants are subject to a cashless exercise feature, with the exercise price and number of shares issuable upon exercise subject to change in connection with stock splits, dividends, reclassifications and other conditions.

### **Item 1.02 Termination of a Material Definitive Agreement.**

Concurrently with the funding, the Company utilized a portion of the SWK Loan funds as full payment to an affiliate of LSAF to terminate all amounts due to LSAF in connection with the existing LSAF Loan and related security agreements, as amended, originally entered into between the Company and LSAF on May 11, 2015, which loan had a principal balance of \$12,120,310 at the time of final payment, along with a five percent (5%) exit fee and one percent (1%) prepayment fee and other related expenses. The description regarding the Loan Agreement and termination of the LSAF Loan are set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 1.02 by reference.

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

On July 17, 2017, the Company completed the disposition of substantially all its assets associated with its sinus related business, including but not limited to, certain intellectual property rights, trademarks, copyrights, inventories, equipment, customer lists, databases, permits, licenses, and assignment of the Company's lease obligation for its Pennsylvania based pharmacy (the "Assets") pursuant to an Asset Purchase Agreement (the "Purchase Agreement"), dated June 27, 2017, by and among the Company and its wholly owned subsidiaries ImprimisRx PA, Inc. and ImprimisRx CA, Inc. (collectively the "Sellers") and Creative Pharmacy Solutions Central, LLC (the "Buyer"), for a total sales price of approximately \$450,000.

In connection with the closing of the Purchase Agreement (the "Closing"), the Buyer paid to the Company an aggregate initial cash payment of \$40,000. In addition, the Buyer is obligated to pay the remaining \$410,000 in the form of a sellers note that will bear interest at 6% per annum (the "Sellers Note"). The Buyer will make forty-eight (48) monthly cash payments to the Company of \$9,628.86 each over the four years following the Closing, totaling \$462,185.28; provided however, that the Buyer will have the option to make a one-time payment of \$365,000 any time prior to December 31, 2017, and the Company will waive any remaining amounts due of the Seller Note. The principal amount of the Seller Note may also be reduced by \$125,000, if after a period of 60 days following the close, certain revenues associated with the Assets are less than 60% of the revenues associated with the Assets 60 days prior to the close of the transaction.

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

The description regarding the Loan Agreement set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 2.03 by reference.

### **Item 3.02 Unregistered Sales of Equity Securities.**

The description regarding the Lender Warrants set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.02 by reference.

The offer, sale and issuance of the Lender Warrants and the shares of the Company's common stock to be issued upon the exercise thereof (collectively, the "Securities") have not been registered under the Securities Act of 1933, as amended (the "Securities Act"). The Securities have been and will be sold and issued in reliance upon the exemption from registration afforded by Section 4(a)(2) of the Securities Act based on the following facts: the recipient of the Securities has represented that it is an accredited investor as defined in Rule 501 promulgated under the Securities Act, that it has acquired or will acquire the Securities for investment for its own account and not with a view to the public resale or distribution of the Securities, and that it has the investment experience to evaluate the risks of the investment; the Company used no advertising or general solicitation in connection with the issuance and sale of the Securities; and the Securities have been and will be issued as restricted securities. The Securities may not be offered or sold in the United States absent registration under or exemption from the Securities Act and any applicable state securities laws. This Current Report on Form 8-K is not an offer to sell or the solicitation of an offer to buy the Securities.

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**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
10.1	Loan and Security Agreement, dated July 19, 2017, by and between Imprimis Pharmaceuticals, Inc. and SWK Funding LLC.
99.1	Press Release issued by Imprimis Pharmaceuticals, Inc. on July 20, 2017.

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**SIGNATURES**

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

**Imprimis Pharmaceuticals, Inc.**

Date: July 20, 2017

By: /s/ Andrew R. Boll

Name: Andrew R. Boll

Title: Chief Financial Officer

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## EXHIBIT INDEX

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## LOAN AND SECURITY AGREEMENT

**THIS LOAN AND SECURITY AGREEMENT** (as the same may be amended, restated, modified, or supplemented from time to time, this “**Agreement**”) dated as of July 19, 2017 (the “**Effective Date**”) among SWK Funding LLC as collateral agent (in such capacity, together with its successors and assigns in such capacity, “**Collateral Agent**”), and the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including HI Imprimis, LLC, SR-Imprimis, LLC and SWK Funding LLC in its capacity as a Lender (each a “**Lender**” and collectively, the “**Lenders**”), and **IMPRIMIS PHARMACEUTICALS, INC.**, a Delaware corporation (“**Imprimis**”), **IMPRIMIS NJOF, LLC**, a New Jersey limited liability company (“**NJOF**”), **IMPRIMISRX CA, INC.** (f/k/a South Coast Specialty Compounding, Inc.), a California corporation (“**CA**”), and **IMPRIMISRX NJ, LLC** (f/k/a Pharmacy Creations, LLC.), a New Jersey limited liability company (“**NJ**” and together with Imprimis, NJOF and CA, individually and collectively, jointly and severally, “**Borrower**”), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

### 1. DEFINITIONS AND OTHER TERMS

**1.1 Terms.** Capitalized terms used herein shall have the meanings set forth in Section 1.3 to the extent defined therein. All other capitalized terms used but not defined herein shall have the meaning given to such terms in the Code. Any accounting term used but not defined herein shall be construed in accordance with GAAP and all calculations shall be made in accordance with GAAP. The term “financial statements” shall include the accompanying notes and schedules.

**1.2 Section References.** Any section, subsection, schedule or exhibit references are to this Agreement unless otherwise specified.

**1.3 Definitions.** The following terms are defined in the Sections or subsections referenced opposite such terms:

“ <b>Aggregate Revenue</b> ”	Section 2.6(a)
“ <b>Agreement</b> ”	Preamble
“ <b>Amortization Cap</b> ”	Section 2.2(b)(ii)
“ <b>Borrower</b> ”	Preamble
“ <b>Claims</b> ”	Section 12.2
“ <b>Collateral Agent</b> ”	Preamble
“ <b>Collateral Agent Report</b> ”	Exhibit B, Section 5
“ <b>Communication</b> ”	Section 10
“ <b>Default Rate</b> ”	Section 2.3(b)
“ <b>Effective Date</b> ”	Preamble
“ <b>Eton Agreement</b> ”	Definition of “Eton License/Disposition”
“ <b>Event of Default</b> ”	Section 8
“ <b>Indemnified Person</b> ”	Section 12.2
“ <b>Lender</b> ” and “ <b>Lenders</b> ”	Preamble
“ <b>Lender Transfer</b> ”	Section 12.1
“ <b>New Subsidiary</b> ”	Section 6.10
“ <b>Non-Funding Lender</b> ”	Exhibit B, Section 10(c)(ii)
“ <b>Other Lender</b> ”	Exhibit B, Section 10(c)(ii)
“ <b>Perfection Certificate</b> ” and “ <b>Perfection Certificates</b> ”	Section 5.1
“ <b>Revenue-Based Payment</b> ”	Section 2.6(a)
“ <b>Term Loan</b> ”	Section 2.2(a)
“ <b>Termination Date</b> ”	Exhibit B, Section 8
“ <b>Transfer</b> ”	Section 7.1

In addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

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

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

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

“**Amortization Date**” is July 15, 2018; provided that if the Interest Only Extension Conditions are satisfied, then February 14, 2019.

“**Anti-Terrorism Laws**” are any laws relating to terrorism or money laundering, including without limitation Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

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

“**Borrower’s Books**” are Borrower’s or any of its Subsidiaries’ books and records including ledgers, federal, and state tax returns, records regarding Borrower’s or its Subsidiaries’ assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“**Business Day**” is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

“**Cash Equivalents**” are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor’s Ratings Group or Moody’s Investors Service, Inc., and (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent.

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

“**Collateral**” is any and all properties, rights and assets of Borrower described on Exhibit A.

“**Collateral Account**” is any Deposit Account, Securities Account, or Commodity Account, or any other bank account maintained by Borrower or any Subsidiary at any time.



“**Commitment Percentage**” is set forth in Schedule 1.1, as amended from time to time.

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

“**Compliance Certificate**” is that certain certificate in substantially the form attached hereto as Exhibit D.

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

“**Control Agreement**” is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account (other than an Excluded Account) or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account (other than an Excluded Account), Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent, for the benefit of the Lenders, obtains “control” (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

“**Copyrights**” are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

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

“**Disqualified Equity Interests**” means any Equity Interests requiring any Borrower or its Subsidiaries to, directly or indirectly, pay any dividends or distributions on, or purchase, redeem or retire, such Equity Interests, in each case, prior to the Maturity Date, or make any payment on account of or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of such Equity Interests, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of any Borrower or any of its Subsidiaries, in each case, prior to the Maturity Date.

“**DOJ**” means the U.S. Department of Justice or any successor thereto or any other comparable Governmental Authority.

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

“**EBITDA**” shall mean (a) Net Income, plus (b) Interest Expense, plus (c) to the extent deducted in the calculation of Net Income, depreciation expense, amortization expense and expenses paid in Equity Interests, plus (d) income tax expense.

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

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

“ERISA” is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

“**Excluded Account**” means accounts of Borrower or any of its Subsidiaries used exclusively for payroll, payroll taxes and other employee wage and benefit payments, as identified to Collateral Agent by Borrower as such in the Perfection Certificate or otherwise by written notice from time to time, collectively not to exceed at any time an amount equal to Borrower’s payroll for the then-next two payroll cycles.

“**Exigent Circumstance**” means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

“**Eton License/Disposition**” means the sale and license by Imprimis to Eton Pharmaceuticals, Inc. (“**Eton**”) of (i) Injectable Pentoxifylline and (ii) Synthetic Corticotropin, in each case, as set forth in and subject to the terms of those two certain Asset Purchase and License Agreements between Imprimis and Eton dated as of May 9, 2017 (each, an “**Eton Agreement**”).

“**Facility Fee**” is a fee due on the Effective Date equal to \$160,000 payable to Lenders in accordance with their respective Pro Rata Shares.

“**FDA**” means the U.S. Food and Drug Administration or any successor thereto or any other comparable Governmental Authority.

“**Final Fee**” is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest or any other fee payable hereunder) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan in whole pursuant to Section 2.2(c) or (d), in each case equal to \$800,000, payable to Lenders in accordance with their respective Pro Rata Shares.

“**Foreign Currency**” means lawful money of a country other than the United States.

“**Foreign Subsidiary**” is a Subsidiary that is not an entity organized under the laws of the United States or any state thereof.

“**Funding Date**” is any date on which a Term Loan is made to or on account of Borrower, which shall be a Business Day.

“**GAAP**” is accounting principles generally accepted in the United States of America as set forth in the opinions and pronouncements of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination, consistently applied.

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

“**Governmental Approval**” is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

“**Governmental Authority**” is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body (including, without limitation, the FDA and any state board of pharmacy or state pharmacy licensing authority), court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

“**Guarantor**” is any Person providing a Guaranty in favor of Collateral Agent for the benefit of the Lenders.

“**Guaranty**” is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

“**Indebtedness**” is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

“**Insolvency Proceeding**” is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions or proceedings seeking reorganization, arrangement, or other relief.

“**Insolvent**” means not Solvent.

“**Intellectual Property**” means all of Borrower’s or any of its Subsidiaries’ right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above;

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(g) all licenses, sublicenses or other contracts under which Borrower or any Subsidiary is granted rights by third parties in any Intellectual Property asset.

“**Interest Expense**” shall mean, for any period, interest expense of Borrower for such period, as determined in accordance with GAAP consistently applied.

**“Interest Only Extension Conditions”** shall mean satisfaction of each of the following events: (a) no default or Event of Default shall have occurred; and (b) achievement of the Revenue Threshold on or before the Threshold Date.

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

**“Investment”** is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

**“IP Security Agreement”** is that certain Intellectual Property Security Agreement executed and delivered by Borrower to Collateral Agent and dated as of the Effective Date, as may be amended, restated, or otherwise modified or supplemented from time to time.

**“Key Person”** is Borrower’s (a) Chief Executive Officer, who is Mark L. Baum as of the Effective Date, (b) Chief Financial Officer, who is Andrew Boll as of the Effective Date, (c) Chief Commercial Officer, who is John Saharek as of the Effective Date, (d) Chief Operating Officer, who is Clayton D. Edwards as of the Effective Date, (e) Vice President of Quality, who is Pramod Sharma as of the Effective Date (f) Vice President of Manufacturing, who is Sanjay Samudre as of the Effective Date.

**“Knowledge”** means to the “best of” Borrower’s knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

**“Lender”** is any one of the Lenders.

**“Lenders”** are the Persons identified on Schedule 1.1 hereto and each permitted assignee that becomes a party to this Agreement pursuant to Section 12.1.

**“Lenders’ Expenses”** are all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

**“LIBOR Rate”** means a fluctuating rate per annum (but not to exceed 3.00%) equal to the rate which appears on the Bloomberg Page BBAM1 (or on such other substitute Bloomberg page that displays rates at which U.S. Dollar deposits are offered by leading banks in the London interbank deposit market), as the offered rate for loans in Dollars for a three (3) month period, rounded upwards to the nearest 1/8 of 1%. The rate is set by the ICE Benchmark Administration as of 11:00 a.m. (London time) as determined two (2) Business Days prior to each Payment Date, and effective on the Payment Date immediately following such determination date. If Bloomberg Professional Service (or another nationally-recognized rate reporting source acceptable to Collateral Agent) no longer reports the LIBOR Rate or Collateral Agent determines in good faith that the rate so reported no longer accurately reflects the rate available to Collateral Agent in the London Interbank Market or if such index no longer exists or if page USD-LIBOR-BBA (ICE) no longer exists or accurately reflects the rate available to Collateral Agent in the London Interbank Market, Collateral Agent may select a replacement index that approximates as near as possible such prior index. Notwithstanding the foregoing, in no event shall the “LIBOR Rate” ever be less than one percent (1.50%) per annum at any time.

**“Lien”** is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

**“Loan Documents”** are, collectively, this Agreement, the Pledge Agreement, the IP Security Agreement, the Warrants, the Perfection Certificates, each Control Agreement, each Compliance Certificate, each Loan Payment Request Form, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with this Agreement; all as amended, restated, or otherwise modified or supplemented from time to time.

“**Loan Payment Request Form**” is that certain form attached hereto as Exhibit C.

“**Material Adverse Change**” is (a) a material adverse change in the business, operations or condition (financial or otherwise) of Borrower or any Subsidiary, when taken as a whole; (b) a material impairment of the prospect of repayment of any portion of the Obligations or (c) a material adverse effect on the Collateral that is not the result of the Collateral Agent’s or the Lenders’ action or inaction in connection with filings made or not made with respect to the Collateral. For the avoidance of doubt, the following events, solely in and of themselves, shall not constitute a Material Adverse Change or a Material Adverse Effect: (a) a “going concern” or like qualification or “emphasis of matter” paragraph in an auditor’s opinion; (b) Borrower or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Borrower or any of its Subsidiaries of \$1,000,000 or less; (c) Borrower or any of its Subsidiaries enters into a settlement agreement with the FDA, DOJ, or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of \$1,000,000 or less; or (d) an action by a Governmental Authority of a type and magnitude substantially similar to those disclosed in the Perfection Certificate provided to the Collateral Agent prior to the date hereof, which could not reasonably be expected to cause Borrower to discontinue its operations or otherwise result in or cause a Material Adverse Change.

“**Material Agreement**” is (a) each Eton Agreement and (b) any license, agreement or other contractual arrangement with a Person or Governmental Authority whereby Borrower or any of its Subsidiaries is reasonably likely to be required to transfer, either in-kind or in cash, prior to the Maturity Date, assets or property valued (book or market) at more than \$500,000 in the aggregate or any license, agreement or other contractual arrangement conveying rights in or to any Intellectual Property necessary to make, use or sell any Inventory, products or services of Borrower or any Subsidiary.

“**Material Product**” is any Product that constitutes 10.0% or more of the total trailing twelve month revenue (under GAAP) of Borrower and its Subsidiaries on a consolidated basis.

“**Maturity Date**” is July 19, 2021; provided that if Borrower satisfies the Revenue Threshold by the Threshold Date, then July 19, 2022.

“**Net Income**” means, for any period as at any date of determination, the net income (or loss), after provision for taxes, of Borrower for such period taken as a single accounting period as determined under GAAP.

“**Net Sales**” means for any period, net revenue of the Borrower and its Subsidiaries for such period, derived solely from Product sales, services, royalty payments, and other revenue from the sale, licensing, or distribution of Products and services (including Products distributed for product development purposes and used in pre-clinical trials). To the extent applicable, components of Net Sales shall be determined in the ordinary course of business in accordance with historical practice and using the accrual method of accounting in accordance with GAAP.

“**Obligations**” are all of Borrower’s obligations to pay when due any debts, principal, interest, Lenders’ Expenses, the Final Fee, any Revenue-Based Payments, the Prepayment Fee, and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or the other Loan Documents (other than the Warrants), and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower’s duties under the Loan Documents.

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

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

**“Operating Documents”** are, for any Person, such Person’s formation documents, as certified by the Secretary of State (or equivalent agency) of such Person’s jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

**“Patents”** means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, re-examination certificates, utility models, extensions and continuations-in-part of the same.

**“Payment Date”** is the earlier to occur of (i) the forty-fifth (45<sup>th</sup>) calendar day of each fiscal quarter or (ii) when such forty-fifth (45<sup>th</sup>) calendar day is not a Business Day, the next immediately succeeding Business Day. The first Payment Date to occur hereunder shall be August 14, 2017.

**“Permitted Indebtedness”** is:

(a) Borrower’s Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors and in connection with credit cards incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed (A) Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) for construction and improvement efforts of pharmacy and outsourcing facilities in New Jersey and California, and (B) Two Hundred Fifty Thousand Dollars (\$250,000.00) for other capitalized lease obligations and purchase money Indebtedness at any time, and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower’s business;

(g) Indebtedness related to letters of credit related to trade payables and creditors and real estate leases incurred in the Borrower’s ordinary course of business, in an aggregate outstanding principal amount that does not exceed \$500,000;

(h) Indebtedness consisting of deferred compensation owing under the Stock Purchase Agreement, dated as of November 26, 2014 (without any amendment or modification effective after the date hereof without Collateral Agent’s consent), among Borrower, ImprimisRx CA, Inc. (fka South Coast Specialty Compounding, Inc. d/b/a Park Compounding) and the seller parties thereto;

(i) Indebtedness consisting of the bona fide financing of insurance premiums or self-insurance obligations (which must be commercially reasonable and consistent with insurance practices generally) that does not exceed \$350,000;

(j) Indebtedness (i) among Borrowers, (ii) of any Subsidiary that is not a Borrower to Borrower that is a Permitted Investment, and (iii) of any Subsidiary that is not a Borrower to another Subsidiary that is not a Borrower, provided that, in each case, if any such Indebtedness exceeds Two Hundred and Fifty Thousand (\$250,000) for each transaction or Seven Hundred and Fifty Thousand (\$750,000) in the aggregate, it is, at Collateral Agent’s discretion, subordinated to the Obligations hereunder in form and substance acceptable to Collateral Agent and any notes or other instruments evidencing such Indebtedness are pledged to Collateral Agent;

(k) Deposits or advances received from customers in the ordinary course of business;

(l) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by Borrower or any Subsidiary in the ordinary course of business; and

(m) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (l) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, or its Subsidiary, as the case may be.

**“Permitted Investments”** are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower’s investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of Deposit Accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower’s board of directors; and (iii) other loans or arrangements in the ordinary course of the Borrower’s business that does not to exceed in the aggregate for (i), (ii) and (iii) Three Hundred Fifty Thousand Dollars (\$350,000.00) in each fiscal year.

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary;

(i) Investments in Subsidiaries, not to exceed Five Hundred Thousand Dollars (\$500,000) per fiscal year;

(j) Investments in joint ventures or strategic alliances in the ordinary course of Borrower’s business consisting of the licensing of technology, the development of technology or the providing of technical support, in each case as permitted hereunder (i.e. under a Permitted License), not to exceed Five Hundred Thousand Dollars (\$500,000) per fiscal year; and

(k) Excluded Accounts.

**“Permitted Licenses”** are (A) licenses of over-the-counter software that is commercially available to the public, (B) non-exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property, (C) exclusive or non-exclusive licenses relating to Investments described under clause (j) of the definition of “Permitted Investments”; provided, that, with respect to each such exclusive license described in this clause (C), the license (i) constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property, (ii) is limited in territory with respect to a specific geographic country or region (i.e. Japan, Germany, northern China) outside of the United States (i.e., not exclusive in the United States), and (iii) Borrower has obtained the consent and acknowledgement of the counterparty to such license for the collateral assignment of such license to the Collateral Agent for the benefit of the Lenders or (D) the Eton License/Disposition.

**“Permitted Liens”** are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of “Permitted Indebtedness,” provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens securing Indebtedness permitted under clause (g) of the definition of “Permitted Indebtedness;

(e) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(f) Liens to secure payment of workers’ compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(g) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (d), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(h) leases or subleases of real property granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower’s business (or, if referring to another Person, in the ordinary course of such Person’s business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;



(i) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6 hereof;

(j) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(k) Permitted Licenses;

(l) deposits to secure indebtedness permitted under clause (h) of the definition of "Permitted Indebtedness";

(m) servitudes, easements, rights of way, restrictions and other similar encumbrances on real property imposed by applicable laws and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor imperfections in title thereto which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of Borrower and its Subsidiaries; and

(n) with respect to any real property, (A) such defects or encroachments as might be revealed by an up-to-date survey of such real property; (B) the reservations, limitations, provisos and conditions expressed in the original grant, deed or patent of such property by the original owner of such real property pursuant to applicable laws; and (C) rights of expropriation, access or user or any similar right conferred or reserved by or in applicable laws, which, in the aggregate for (A), (B) and (C), are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of Borrower and its Subsidiaries.

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

**"Pledge Agreement"** is that certain Pledge Agreement executed and delivered by Borrower to Collateral Agent and dated as of the Effective Date, as may be amended, restated, or otherwise modified or supplemented from time to time.

**"Prepayment Fee"** is an additional fee payable to the Lenders in amount equal to six percent (6%) of the principal amount of Term Loan prepaid after July 19, 2018 and prior to July 19, 2019, whether by mandatory or voluntary prepayment, acceleration or otherwise; provided that a Prepayment Fee shall not be payable if the Revenue Threshold has been satisfied by the Threshold Date.

**"Product"** means any products manufactured, sold, developed, tested or marketed by Borrower or any of its Subsidiaries.

**"Property"** means any interest in any kind of property or asset, whether real, personal or mixed, and whether tangible or intangible.

**"Pro Rata Share"** is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

**"Recalled Material Product"** means any Material Product that Borrower or any of its Subsidiaries recalls, withdraws, removes or discontinues (or expect to discontinue) manufacturing for three (3) continuous months, distributing, and/or marketing or that is withdrawn, removed or the manufacturing, distribution and/or marketing of which is discontinued.

**"Registered Organization"** is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made under the Code.

**“Registration”** means any registration, authorization, approval, license, permit, clearance, certificate, and exemption issued or allowed by the FDA or state pharmacy licensing authorities (including, without limitation, new drug applications, abbreviated new drug applications, biologics license applications, investigational new drug applications, over-the-counter drug monograph, device pre-market approval applications, device pre-market notifications, investigational device exemptions, product recertifications, manufacturing approvals, registrations and authorizations, CE Marks, pricing and reimbursement approvals, labeling approvals or their foreign equivalent, controlled substance registrations, and wholesale distributor permits).

**“Regulatory Action”** means an administrative, regulatory, or judicial enforcement action, proceeding, investigation or inspection, FDA Form 483 notice of inspectional observation, warning letter, untitled letter, other notice of violation letter, recall, seizure, Section 305 notice or other similar written communication, injunction or consent decree, issued by the FDA or a federal or state court.

**“Related Persons”** means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates.

**“Required Lenders”** means Lenders holding at least fifty-one percent (51%) of the aggregate outstanding principal balance of the Term Loan, provided that if there are only two (2) Lenders, then Required Lenders hereunder shall mean both of such Lenders (Lenders that are Affiliates of one another being considered as one Lender for purposes of this proviso).

**“Requirement of Law”** is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

**“Responsible Officer”** is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting alone.

**“Revenue Threshold”** is Borrower’s achievement, prior to the Threshold Date of trailing twelve (12) month revenue under GAAP of at least Thirty-Three Million Dollars (\$33,000,000.00) during any consecutive twelve (12) month period, measured monthly on an unaudited basis for any month for which audited financial statements are not available, subject to verification and supporting evidence reasonably requested by Collateral Agent.

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

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

**“Solvent”** is, with respect to any Person: the fair salable value of such Person’s consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person’s liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature in the ordinary course (without taking into account any forbearance and extensions related thereto).

**“Subordinated Debt”** is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance reasonably satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms acceptable to Collateral Agent and the Lenders.

“**Subsidiary**” is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other Equity Interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries. Unless otherwise specified, references herein to a Subsidiary means a Subsidiary of Borrower.

“**Supermajority Lenders**” means (a) prior to the sale or assignment by HI Imprimis, LLC and/or SR-Imprimis, LLC of any interest held in the Obligations to any Person other than a controlled Affiliate of HI Imprimis, LLC and/or SR-Imprimis, LLC (including any Affiliate of Life Sciences Alternative Funding LLC), at least sixty six and two-thirds of one percent (66 2/3%), provided that if there are only two (2) Lenders, then Supermajority Lenders hereunder shall mean both of such Lenders (Lenders that are Affiliates of one another being considered as one Lender for purposes of this proviso); or (b) after the sale or assignment by HI Imprimis, LLC and/or SR-Imprimis, LLC of any interest held in the Obligations to any Person other than a controlled Affiliate of HI Imprimis, LLC and/or SR-Imprimis, LLC (including any Affiliate of Life Sciences Alternative Funding LLC), the Required Lenders.

“**Term Loan Commitment**” is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1. “**Term Loan Commitments**” means the aggregate amount of such commitments of all Lenders.

“**Threshold Date**” means June 30, 2018.

“**Trademarks**” means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower and each of its Subsidiaries connected with and symbolized by such trademarks.

“**Unrestricted Cash**” means cash held by Borrower in account(s) located in the United States of America subject to a Control Agreement in favor of Collateral Agent.

“**Warrant**” means any of that certain Warrant to Purchase Stock dated as of the Effective Date issued by Borrower in favor of each Lender or such Lender’s Affiliates or any other warrant entered into in connection with the Term Loan, all as may be amended, restated, or otherwise modified or supplemented from time to time.

## **2. LOANS AND TERMS OF PAYMENT**

**2.1 Promise to Pay.** Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

### **2.2 Term Loans.**

(a) Availability. Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate principal amount of Sixteen Million Dollars (\$16,000,000.00) according to each Lender’s Term Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a “**Term Loan**”, and collectively as the “**Term Loans**”). After repayment, no Term Loan may be reborrowed.

#### (b) Repayment.

(i) Borrower shall make quarterly payments of interest, in arrears, commencing on the first (1st) Payment Date following the Effective Date, and continuing on the Payment Date of each successive quarter thereafter. Commencing on the Effective Date, and continuing on the Payment Date of each quarter thereafter, Borrower shall make payments of principal and interest to each Lender in accordance with Section 2.6. All unpaid principal and accrued and unpaid interest with respect to each Term Loan is due and payable in full on the Maturity Date. The Term Loans may only be prepaid (other than via the application of Revenue-Based Payments in accordance with Section 2.6) in accordance with Sections 2.2(c) and 2.2(d).

(ii) Notwithstanding Section 2.6 or any other provision in the Loan Documents, quarterly principal payments made pursuant to Section 2.6 on or after the Amortization Date shall not exceed (the "Amortization Cap") (x) if Borrower satisfies the Revenue Threshold by the Threshold Date, \$750,000 per Payment Date and (y) if Borrower fails to satisfy the Revenue Threshold by the Threshold Date, \$1,000,000 per Payment Date.

(c) Mandatory Prepayments. If an event described in Section 7.2(c)(ii) occurs or the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Fee (if applicable), (iii) the Prepayment Fee plus (iv) all other Obligations that are due and payable, including, without limitation, Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Fee had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to each Lender in accordance with its respective Pro Rata Share, the Final Fee in respect of the Term Loans.

(d) Permitted Prepayment of Term Loans. Borrower shall have the option to prepay all, but not less than all of the Term Loans advanced by the Lenders under this Agreement if the Borrower satisfies the Revenue Threshold by the Threshold Date, anytime on or after July 19, 2019, but otherwise anytime on or after July 19, 2018; provided, in each case, Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least five (5) Business Days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Fee, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including, without limitation, Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

### 2.3 Payment of Interest on the Term Loans.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a per annum rate equal to 10.50% plus the LIBOR Rate, which interest shall be payable quarterly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a fixed per annum rate equal to the rate that is otherwise applicable thereto plus three percentage points (3.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year and the actual number of days elapsed.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable quarterly in arrears on each Payment Date. Payments of principal and/or interest received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds.

**2.4 Fees.** Borrower shall pay to Collateral Agent:

(a) Facility Fee. The Facility Fee, which shall be due on the Effective Date;

(b) Final Fee. The Final Fee, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares;

(c) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared among the Lenders in accordance with their respective Pro Rata Shares; and

(d) Lenders' Expenses. All Lenders' Expenses (including reasonable attorneys' fees and expenses for due diligence, investigation, documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

**2.5 Withholding.** Payments received by the Collateral Agent or the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority; provided, that a Lender that shall have become a Lender pursuant to a Lender Transfer shall be entitled to receive only such additional amounts as such Lender's assignor would have been entitled to receive pursuant to this Section 2.5. Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.5 shall survive the termination of this Agreement.

## **2.6 Revenue Based Payment.**

(a) During the period commencing on the Effective Date until the Obligations are satisfied in full (other than inchoate indemnity obligations), Borrower promises to pay to each Lender according to its Pro Rata Share, an amount based on the percentage of the aggregate of Net Sales, Royalties and any other income or revenue recognized by Borrower and its Subsidiaries, on a consolidated basis, in accordance with GAAP (collectively, the "**Aggregate Revenue**") in each fiscal quarter (the "**Revenue-Based Payment**"), which will be applied to the outstanding principal and interest amounts of the Term Loans according to each Lender's Pro Rata Share in accordance with this Agreement (including Section 2.6(e)). The Revenue-Based Payment with respect to each fiscal quarter shall be payable on the Payment Date immediately following such fiscal quarter and, anything to the contrary in this Agreement, including this Section 2.6, notwithstanding, shall not exceed the applicable Amortization Cap in any such fiscal quarter. Commencing with the fiscal quarter immediately prior to the Effective Date (such calculations to be prorated for such fiscal quarter, if applicable, based on actual days elapsed between the Effective Date and the end of such fiscal quarter), the Revenue-Based Payment, subject to the immediately preceding sentence, with respect to each fiscal quarter shall be calculated as the difference between:

(i) the aggregate Revenue-Based Payments payable from January 1 of the fiscal year of which such fiscal quarter is part through the end of such fiscal quarter, calculated as the sum of:

(A) (1) twenty percent (20%) of Aggregate Revenue up to and including \$10,000,000 in such fiscal year; plus (2) fifteen percent (15%) of Aggregate Revenue greater than \$10,000,000; or

(B) as it relates to any Payment Dates after the Borrower fails to satisfy the Revenue Threshold by the Threshold Date, fifty percent (50%) of Aggregate Revenue; and

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

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

(d) Notwithstanding anything herein to the contrary, if Aggregate Revenue is not sufficient for Borrower to pay any required interest or other amount due under this Agreement or any other Loan Document pursuant to Revenue-Based Payments under this Section 2.6, Borrower shall not be excused from making such payment and shall remain fully and unconditionally obligated to make such payment under this Agreement or any other Loan Document. Until such payment is made (and for the avoidance of doubt, such payments shall not be waived or excused by the following) an amount equal to such payment shall be added to the principal outstanding hereunder and shall accrue interest pursuant to Section 2.3.

(e) Each Revenue-Based Payment on each Payment Date will be applied in the following priority:

(i) FIRST, to the payment of all Lenders' Expenses, fees, costs, expenses and indemnities due and owing to Agent pursuant to the Loan Documents, and any other Obligations owing to Agent in respect of sums advanced by Agent to preserve or protect the Collateral or to preserve or protect its security interest in the Collateral;

(ii) SECOND, to the payment of all Lenders' Expenses, fees, costs, expenses and indemnities due and owing to Lenders in respect of the Term Loans and Term Loan Commitments pursuant to the Loan Documents, pro rata based on each Lender's respective Pro Rata Share;

(iii) THIRD, to the payment of all accrued but unpaid interest in respect of the Term Loans as of such Payment Date, pro rata based on each Lender's Pro Rata Share;

(iv) FOURTH, on and after the Amortization Date and subject to the Amortization Cap, to the payment of principal of the Term Loans, pro rata based on each Lender's Pro Rata Share; and

(v) FIFTH, all remaining amounts shall be retained by Borrower.

### **3. CONDITIONS OF LOANS**

**3.1 Conditions Precedent to Initial Term Loan.** Each Lender's obligation to make a Term Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance reasonably satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(c) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries, other than an Excluded Account;

(d) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date;

(e) a copy of resolutions of the governing body for Borrower evidencing approval of the Term Loans and other transactions evidenced by the Loan Documents;

(f) duly executed original officer's certificates for Borrower and each Subsidiary that is a party to the Loan Documents certifying as to (i) the incumbency of each Responsible Officer executing each Loan Document and (ii) the documents delivered pursuant to Section 3.1(d) and 3.1(e), in a form reasonably acceptable to Collateral Agent and the Lenders;

(g) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Term Loan, will be terminated or released;

(h) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(i) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders;

(j) a copy of any applicable Investors Rights Agreement and any amendments thereto;

(k) a payoff letter executed by IMMY Funding LLC;

(l) a subordination agreement with Essex Capital Corporation in form and substance satisfactory to Collateral Agent and the Lenders;

(m) payment of the Facility Fee and Lenders' Expenses then due as specified in Section 2.4 hereof.

**3.2 Conditions Precedent to all Term Loans.** The obligation of each Lender to extend each Term Loan, including the initial Term Loan, is subject to the following conditions precedent:

(a) receipt by Collateral Agent of an executed Loan Payment Request Form in the form of Exhibit C attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the Funding Date of each Term Loan; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the funding of such Term Loan;

(c) in such Lender's reasonable discretion, there has not been any Material Adverse Change;

(d) no Event of Default or event that with the passage of time would result in an Event of Default, shall exist; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

**3.3 Covenant to Deliver.** Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Term Loan. Borrower expressly agrees that a Term Loan made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Term Loan in the absence of a required item shall be made in each Lender's sole discretion.

**3.4 Procedures for Borrowing.** Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan (other than the Term Loan funded on the Effective Date), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 noon New York City time twelve (12) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to Collateral Agent by electronic mail or facsimile a completed Loan Payment Request Form executed by a Responsible Officer or his or her designee. The Collateral Agent may rely on any telephone notice given by a person whom Collateral Agent reasonably believes is a Responsible Officer or designee.

#### **4. CREATION OF SECURITY INTEREST**

**4.1 Grant of Security Interest.** Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. If Borrower shall acquire a commercial tort claim (as defined in the Code), Borrower shall grant to Collateral Agent, for the ratable benefit of the Lenders, a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

If this Agreement is terminated, Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate contingent obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate contingent obligations) and at such time as the Lenders' obligation to extend Term Loans has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

**4.2 Authorization to File Financing Statements.** Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents.

#### **5. REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

**5.1 Due Organization, Authorization: Power and Authority.** Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate and any updates or supplements thereto on or before the Effective Date (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that all the information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries is accurate and complete.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' organizational documents, including its respective Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or are being obtained pursuant to Section 6.1(b), or (v) constitute an event of default under any Material Agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.



## 5.2 Collateral.

(a) Borrower and each its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens, and neither Borrower nor any of its Subsidiaries have any Deposit Accounts, Securities Accounts, Commodity Accounts or other investment accounts other than the Collateral Accounts or the other investment accounts, if any, described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect of which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein (other than Excluded Accounts). The Accounts are bona fide, existing obligations of the Account Debtors.

(b) The security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens that are permitted by the terms of this Agreement to have priority to Collateral Agent's Lien.

(c) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee, and (ii) no such third party bailee possesses components of the Collateral in excess of Fifty Thousand Dollars (\$50,000.00).

(d) All Inventory and Equipment is in all material respects of good and marketable quality, free from material defects.

(e) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. Except as noted on the Perfection Certificates, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other Material Agreement.

**5.3 Litigation.** Except as disclosed on the Perfection Certificate, there are no actions, suits, investigations, or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than Two Hundred Fifty Thousand Dollars (\$250,000.00) or a claim for infringement of any intellectual property. Except as disclosed on the Perfection Certificate, there are no actions, suits, investigations or proceedings pending or, to the Knowledge of the Responsible Officers, threatened in writing by or against Borrower or any Subsidiaries involving challenges to the validity of the Intellectual Property.

**5.4 No Material Adverse Change; Financial Statements.** All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries. Since December 31, 2016, there has not been a Material Adverse Change.

**5.5 Solvency.** Borrower and each of its Subsidiaries, when taken as a whole, is Solvent.

**5.6 Regulatory Compliance.** Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's Knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws, except where such failure to be in material compliance could not reasonably be expected to have a Material Adverse Change. Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted in the ordinary course of business.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the Knowledge of Borrower and any of their Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

**5.7 Investments.** Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

**5.8 Tax Returns and Payments; Pension Contributions.** Borrower and each of its Subsidiaries has timely filed all required tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries in an amount greater than Fifty Thousand Dollars (\$50,000), in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless such taxes are being contested in accordance with the next sentence. Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent and Lenders of the commencement of, and any material development in, the proceeding; and (c) maintains adequate reserves or other appropriate provisions on the books of such Borrower or Subsidiary, as applicable, in accordance with GAAP and which do not involve, in the reasonable judgment of the Lenders, any risk of the sale, forfeiture or loss of any of the Collateral. Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiaries', prior tax years which could result in additional taxes becoming due and payable by Borrower or its Subsidiaries in an amount greater than Fifty Thousand (\$50,000) Dollars. Borrower and each of its Subsidiaries have paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any material liability of Borrower or its Subsidiaries, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**5.9 Use of Proceeds.** Borrower shall use the proceeds of the Term Loans solely as working capital and to fund its general business requirements in accordance with the provisions of this Agreement, and not for personal, family, household or agricultural purposes.

**5.10 Full Disclosure.** No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized that projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

## **6. AFFIRMATIVE COVENANTS**

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

### **6.1 Government Compliance.**

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the material Governmental Approvals necessary for the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents and the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral.

### **6.2 Financial Statements, Reports, Certificates; Notices.**

(a) Deliver to Collateral Agent and each Lender:

(i) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated and consolidating income statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) as soon as available, but no later than forty-five (45) days after the last day of each quarter, a company prepared consolidated and consolidating balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such month certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(iii) as soon as available, but no later than ninety (90) days after the last day of Borrower's fiscal year or within five (5) days of filing with the Securities and Exchange Commission, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iv) as soon as available after approval thereof by Borrower's board of directors, but no later than the earlier of ten (10) days after such approval and sixty (60) days after the last day of Borrower's fiscal year, Borrower's annual (A) financial projections and (B) budget, in each case, for the entire current fiscal year as approved by Borrower's board of directors; provided that, any revisions to such projections and/or budget approved by Borrower's board of directors shall be delivered to Collateral Agent and the Lenders no later than seven (7) days after such approval);

(v) within five (5) days of delivery, copies of all non-ministerial statements, reports and notices made available to Borrower's board of directors, security holders or holders of Subordinated Debt;

(vi) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission;

(vii) as soon as available, but no later than thirty (30) days after the last day of each month, copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries (other than an Excluded Account), which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s);

(viii) prompt delivery of (and in any event within five (5) days after the same are sent or received) copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a material adverse effect on any of the Governmental Approvals material to Borrower's business or otherwise could reasonably be expected to have a Material Adverse Change;

(ix) prompt notice of any event that (A) could reasonably be expected to materially and adversely affect the Borrower's Intellectual Property and (B) could reasonably be expected to result in a Material Adverse Change;

(x) written notice at least (10) days' prior to Borrower's creation of a New Subsidiary in accordance with the terms of Section 6.10);

(xi) written notice at least (30) days' prior to Borrower's (A) adding any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries), (B) changing its jurisdiction of organization, (C) changing its organizational structure or type, (D) change its legal name, (E) changing any organizational number (if any) assigned by its jurisdiction of organization, or (F) registering or filing any Intellectual Property;

(xii) upon Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, prompt (and in any event within three (3) Business Days) written notice of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default;

(xiii) immediate notice if Borrower or such Subsidiary has Knowledge that Borrower, or any Subsidiary or Affiliate of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads *nolo contendere* to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering;

(xiv) notice of any commercial tort claim with an expected value in excess of Fifty Thousand Dollars (\$50,000) and of the general details thereof;

(xv) if Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, written notice of such occurrence and information regarding such Person's organizational identification number within seven (7) Business Days of receiving such organizational identification number; and

(xvi) upon Collateral Agent's request, Borrower shall furnish to Collateral Agent a report, in form acceptable to Collateral Agent, reconciling the Royalties, Net Sales and all other revenue reported by Borrower to Collateral Agent during any reporting period to the Aggregate Revenue reported by Borrower hereunder for such period and the amount of Revenue-Based Payment(s) made by Borrower in connection with such period(s); and

(xvii) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Section 6.2(a)(ii) above but no later than forty five (45) days after the last day of each quarter, deliver to Collateral Agent and each Lender:

- (i) a duly completed Compliance Certificate signed by a Responsible Officer;
- (ii) an updated Perfection Certificate to reflect any amendments, modifications and updates to certain information in the Perfection Certificate after the Effective Date to the extent such amendments, modifications and updates are permitted by one or more specific provisions in this Agreement;
- (iii) copies of any material Governmental Approvals obtained by Borrower or any of its Subsidiaries;
- (iv) written notice of the commencement of, and any material development in, the proceedings contemplated by Section 5.8 hereof;
- (v) written notice of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages or costs to Borrower or any of its Subsidiaries of Two Hundred Fifty Thousand Dollars (\$250,000.00); and
- (vi) written notice of all returns, recoveries, disputes and claims regarding Inventory that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00) individually or in the aggregate in any calendar year.

(c) Keep proper, complete and true books of record and account in accordance with GAAP in all material respects. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing. Notwithstanding the foregoing, upon request of any Lender, Borrower agrees to permit such Lender to communicate with Borrower's accounting firm with respect to the consolidated financial statements delivered hereunder.

**6.3 Inventory; Returns.** Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date.

**6.4 Taxes; Pensions.** Timely file and require each of its Subsidiaries to timely file, all required tax returns and reports in an aggregate amount greater than Three Hundred Fifty Thousand Dollars (\$350,000) and timely pay, and require each of its Subsidiaries to timely file, all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries in an aggregate amount greater than Three Hundred Fifty Thousand Dollars (\$350,000), except as otherwise permitted pursuant to the terms of Section 5.8 hereof, and shall deliver to Collateral Agent and each Lender, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

**6.5 Insurance.** Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request, including, but not limited to, D&O insurance and product liability insurance reasonably satisfactory to Collateral Agent. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee and waive subrogation against Collateral Agent, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days' prior written notice before any such policy or policies shall be materially altered or canceled (other than cancellation for non-payment of premiums, for which ten (10) days' prior written notice shall be required). At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy within 90 days of receipt thereof up to Two Hundred Fifty Thousand Dollars (\$250,000.00) with respect to any loss, but not exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make (but has no obligation to do so), at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

## 6.6 Operating Accounts.

(a) Borrower shall provide Collateral Agent ten (10) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account (other than an Excluded Account). In addition, for each Collateral Account (other than an Excluded Account) that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to Excluded Accounts.

(b) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Section 6.6.

**6.7 Protection of Intellectual Property Rights.** Borrower and each of its Subsidiaries shall: (a) protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to its business; (b) promptly advise Collateral Agent in writing of a challenge to the validity, or material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to its business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent.

**6.8 Litigation Cooperation.** Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, without expense to Collateral Agent or the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower.

**6.9 Landlord Waivers; Bailee Waivers.** In the event that Borrower or any of its Subsidiaries, after the Effective Date, intends to add any new offices or business locations, including warehouses, or otherwise store any portion of the Collateral with, or deliver any portion of the Collateral to, a bailee, in each case pursuant to Section 7.2, then Borrower or such Subsidiary will first receive the written consent of Collateral Agent and, in the event that the Collateral at any new location is valued in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate, at Collateral Agent's election, such bailee or landlord, as applicable, must execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent prior to the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

**6.10 Creation/Acquisition of Subsidiaries.** In the event any Borrower or any Subsidiary of any Borrower creates or acquires any Subsidiary after the Effective Date, Borrower or such Subsidiary shall promptly notify Collateral Agent of such creation or acquisition, and Borrower or such Subsidiary shall take all actions reasonably requested by Collateral Agent to achieve any of the following with respect to such “**New Subsidiary**” (defined as a Subsidiary formed after the date hereof during the term of this Agreement): (i) to cause such New Subsidiary to become either a co-Borrower hereunder, if such New Subsidiary is organized under the laws of the United States, or a secured guarantor with respect to the Obligations; and (ii) to grant and pledge to Collateral Agent a perfected security interest in 100% of the stock, units or other evidence of ownership held by Borrower or its Subsidiaries of any such New Subsidiary which is organized under the laws of the United States, and 65% of the stock, units or other evidence of ownership held by Borrower or its Subsidiaries of any such New Subsidiary which is not organized under the laws of the United States.

**6.11 Further Assurances.** Execute any further instruments, including promissory notes, and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent’s Lien in the Collateral or to effect the purposes of this Agreement, including without limitation, permit Collateral Agent or any Lender (i) to meet with officers of Borrower during regular business hours to discuss Borrower’s business and prospects or (ii) to discuss Borrower’s financial condition with Borrower’s accountants.

## **7. NEGATIVE COVENANTS**

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Supermajority Lenders:

**7.1 Dispositions.** Convey, sell, lease, transfer, assign, dispose of (collectively, “**Transfer**”), or permit any of its Subsidiaries to Transfer, all or any part of its business or property (including Intellectual Property), except for (a) Transfers (i) of Inventory in the ordinary course of business; (ii) of worn-out or obsolete Equipment and (iii) the sale of Equity Interests of Eton so long as each Eton Agreement is in full force and effect; and (b) Permitted Liens, Permitted Investments and Permitted Licenses.

**7.2 Changes in Business, Management, Ownership, or Business Locations.** (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent and each Lender within ten (10) days of such, or (ii) enter into any transaction or series of related transactions in which (A) the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than 35% of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions and (B) Borrower ceases to own 100% of the ownership interests of a Subsidiary of Borrower. Borrower shall not, without at least thirty (30) days’ prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Two Hundred Fifty Thousand Dollars (\$250,000.00) in assets or property of Borrower or any of its Subsidiaries); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

**7.3 Mergers or Acquisitions.** Merge or consolidate, or permit any of its Subsidiaries to (a) merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person, (a) issue any Equity Interests if such issuance could result in an Event of Default pursuant to Section 7.2 or otherwise, or (b) issue any Disqualified Equity Interests. A Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary is a “co-Borrower” hereunder or has provided a secured Guaranty of Borrower’s Obligations hereunder) or with (or into) Borrower provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

**7.4 Indebtedness.** Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

**7.5 Encumbrance.** Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower’s or such Subsidiary’s Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of “Permitted Liens”.

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

**7.7 Restricted Payments.** Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than (i) repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided in each case that such repurchases and payments do not exceed Three Hundred Thousand Dollars (\$300,000.00) in the aggregate per fiscal year and (ii) payments related to share withholdings for individual taxes related to vested restricted stock units (RSUs), options and other equity grants made to employees, as permitted under the Borrower's 2007 and 2017 Incentive Stock and Awards Plans, as amended as of the date hereof, and required under certain of the Borrower's equity grants and employment agreements, in each case as in effect as of the date hereof, and provided that in each case such payments or distributions (A) shall only be made with the proceeds of an equity or Subordinated Debt offering to occur within twenty (20) Business Days following payment and (B) not permit the company's net cash position (i.e. cash on balance sheet) to change in connection with such distributions or payments.

**7.8 Investments.** Directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

**7.9 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, and (b) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries.

**7.10 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders without the consent of the Lenders, which consent shall not be unreasonably withheld, delayed or conditioned.

**7.11 Compliance.** Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Term Loan for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur, if the violation could reasonably be expected to have a Material Adverse Change; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a Material Adverse Change, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any material liability of Borrower or any of its Subsidiaries, including any material liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

**7.12 Compliance with Anti-Terrorism Laws.** Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.



**7.13 Material Agreements.** Neither Borrower nor any of its Subsidiaries shall, without the consent of Collateral Agent (which consent shall not be unreasonably withheld, conditioned or otherwise delayed), (a) enter into a Material Agreement or (b) materially amend a Material Agreement, in each case if such action would materially and adversely affect the interests of the Lenders hereunder.

**7.14 Minimum Cash.** Fail to maintain Unrestricted Cash in an amount greater than or equal to (a) prior to the Threshold Date, One Million Dollars (\$1,000,000) plus, beginning after the Closing Date, the amount of Borrower's accounts payable under GAAP not paid after the 90th day following the invoice date for such accounts payable (disregarding invoices dated prior to March 31, 2017) and (b) on and after the Threshold Date, (x) if Borrower satisfies the Revenue Threshold by the Threshold Date, One Million Dollars (\$1,000,000) plus the amount of Borrower's accounts payable under GAAP not paid after the 90th day following the invoice date for such accounts payable (disregarding invoices dated prior to March 31, 2017) and (y) if Borrower fails to satisfy the Revenue Threshold by the Threshold Date, Four Million Dollars (\$4,000,000) plus the amount of Borrower's accounts payable under GAAP not paid after the 90th day following the invoice date for such accounts payable (disregarding invoices dated prior to March 31, 2017).

#### **7.15 Minimum EBITDA.**

(a) If Borrower fails to satisfy the Revenue Threshold by the Threshold Date, as of the last day of each quarter, suffer or permit its EBITDA for such quarter, to be equal to or less than zero.

(b) If at any time there is one or more Recalled Material Product, as of the last day of each month, suffer or permit its pro forma EBITDA, adjusted to exclude any Net Income attributable for all Recalled Material Products, and measured on a trailing three consecutive calendar month basis, to be less than \$2,000,000.

### **8. EVENTS OF DEFAULT**

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

**8.1 Payment Default.** Borrower fails to (a) make any payment of principal on any Term Loan on its due date, or (b) pay any interest or any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof);

#### **8.2 Covenant Default.**

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Landlord Waivers; Bailee Waivers), 6.10 (Creation/Acquisition of Subsidiaries) or Borrower violates any provision in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within fifteen (15) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the fifteen (15) day period or cannot after diligent attempts by Borrower be cured within such fifteen (15) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Term Loans shall be made during such cure period). For purposes of this Section 8.2(b) only, "Subsidiaries" shall exclude any single Subsidiary or group of Subsidiaries where such Subsidiary's revenue or such group of Subsidiaries' revenue (in each case in accordance with GAAP) or assets is less than 5.0% of the aggregate (A) revenue or (B) assets, of the Borrower and all its Subsidiaries, in each case measured on a consolidated basis for the Borrower and all its Subsidiaries.

**8.3 Material Adverse Change.** A Material Adverse Change has occurred;

**8.4 Attachment; Levy; Restraint on Business.**

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within thirty (30) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any part of its business;

**8.5 Insolvency.** (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within sixty (60) days (but no Term Loans shall be extended while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed). For purposes of this Section 8.5 only, "Subsidiaries" shall exclude any single Subsidiary or group of Subsidiaries where such Subsidiary's revenue or such group of Subsidiaries' revenue (in each case in accordance with GAAP) or assets is less than 5.0% of the aggregate (A) revenue or (B) assets, of the Borrower and all its Subsidiaries, in each case measured on a consolidated basis for the Borrower and all its Subsidiaries.

**8.6 Other Agreements.** There is (a) a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or that could reasonably be expected to have a Material Adverse Change; (b) any default under a Material Agreement that permits the counterparty thereto to accelerate the payments owed thereunder; or (c) a revocation of a Material Agreement which is reasonably likely to cause a Material Adverse Change.

**8.7 Judgments.** (a) One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) (not covered by independent third-party insurance) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of thirty (30) days after the entry thereof or (b) any judgments, orders or decrees rendered against Borrower that could reasonably be expected to result in a Material Adverse Change;

**8.8 Misrepresentations.** Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement, when taken as a whole, is incorrect in any material respect when made;

**8.9 Subordinated Debt.** A default or breach occurs under any Material Agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any material terms of such agreement;

**8.10 Guaranty.** (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Section 8 occurs with respect to any Guarantor; or (d) a Material Adverse Change with respect to any Guarantor;

**8.11 Governmental Approvals; FDA Action.** (a) Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term and such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change; or (b) (i) the FDA, DOJ, or other Governmental Authority initiates a Regulatory Action or any other enforcement action against Borrower or any of its Subsidiaries or any supplier of Borrower or any of its Subsidiaries causes Borrower or any of its Subsidiaries to recall, withdraw, remove or discontinue manufacturing, distributing, and/or marketing any of its products that (i) for each individual product, constitute trailing twelve months revenues (in accordance with GAAP) to the Borrower and its Subsidiaries of at least \$1,000,000, or (ii) in the aggregate for all such products, constitute trailing twelve months revenues (in accordance with GAAP) to the Borrower and its Subsidiaries of at least (A) \$2,500,000, or (B) 5.0% of the total trailing twelve month revenue for Borrower and its Subsidiaries, whichever is greater, in each case even if such action is based on previously disclosed conduct; (ii) the FDA issues a warning letter or Regulatory Action to Borrower or any of its Subsidiaries with respect to any of its activities or products which could reasonably be expected to result in a Material Adverse Change; (iii) Borrower or any of its Subsidiaries conducts a mandatory or voluntary recall which could reasonably be expected to result in liability and expense to Borrower or any of its Subsidiaries of \$1,000,000 or more; (iv) Borrower or any of its Subsidiaries enters into a settlement agreement with the FDA, DOJ, or other Governmental Authority that results in aggregate liability as to any single or related series of transactions, incidents or conditions, of \$1,000,000 or more, or that could reasonably be expected to result in a Material Adverse Change even if such settlement agreement is based on previously disclosed conduct; (v) Borrower or any of its Subsidiaries fails to make adequate progress remediating observations identified in an FDA Form 483 notice of inspection observation to Collateral Agent's or, if agreed by the Collateral Agent and Borrower (which agreement by the Collateral Agent or Lenders shall not be unreasonably withheld or delayed), a qualified third party's reasonable satisfaction, within six months of receipt; or (vi) the FDA revokes any authorization or permission granted under any Registration, or Borrower or any of its Subsidiaries withdraws any Registration, that could reasonably be expected to result in a Material Adverse Change.

**8.12 Lien Priority; Intellectual Property.** Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any material portion of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens arising as a matter of applicable law. Any Intellectual Property material to Borrower's business shall cease to be validly owned or licensed by Borrower free and clear of any Liens other than Permitted Liens.

## **9. RIGHTS AND REMEDIES**

### **9.1 Rights and Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to, without notice or demand, and upon the direction of the Supermajority Lenders shall, do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or

(b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right to, without notice or demand, and upon the direction of the Supermajority Lenders shall, do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

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

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance.

**9.2 Power of Attorney.** Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make extend Term Loans hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Term Loans terminates.

**9.3 Protective Payments.** If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

**9.4 Application of Payments and Proceeds.** Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

**9.5 Liability for Collateral.** So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

**9.6 No Waiver; Remedies Cumulative.** Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

**9.7 Demand Waiver.** Borrower waives, to the fullest extent permitted by law, demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

## **10. NOTICES**

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: IMPRIMIS PHARMACEUTICALS, INC.  
12264 El Camino Real, Suite 350  
San Diego, CA 92130

with a copy (which shall not constitute notice) to: GOLENBOCK, EISEMAN, ASSOR, BELL & PESKOE  
437 Madison Avenue, 40<sup>th</sup> Floor  
New York, NY 10022

If to Collateral Agent: SWK FUNDING LLC  
14755 Preston Road  
Suite 105  
Dallas, Texas 75254

with a copy (which shall not constitute notice) to: LATHAM & WATKINS LLP  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111-6538

If to HI Imprimis, LLC:

HI IMPRIMIS, LLC

If to SR-Imprimis, LLC:

SR-IMPRIMIS, LLC

## **11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER**

**11.1 Waiver of Jury Trial.** EACH OF BORROWER, COLLATERAL AGENT AND LENDERS UNCONDITIONALLY WAIVES ANY AND ALL RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER LOAN DOCUMENTS, ANY OF THE INDEBTEDNESS SECURED HEREBY, ANY DEALINGS AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG BORROWER, COLLATERAL AGENT AND/OR LENDERS. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

### **11.2 Governing Law and Jurisdiction.**

(a) THIS AGREEMENT, THE OTHER LOAN DOCUMENTS (EXCLUDING THOSE LOAN DOCUMENTS THAT BY THEIR OWN TERMS ARE EXPRESSLY GOVERNED BY THE LAWS OF ANOTHER JURISDICTION) AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL IN ALL RESPECTS BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF ANY LAWS OTHER THAN THE LAWS OF THE STATE OF NEW YORK), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, REGARDLESS OF THE LOCATION OF THE COLLATERAL, PROVIDED, HOWEVER, THAT IF THE LAWS OF ANY JURISDICTION OTHER THAN NEW YORK SHALL GOVERN IN REGARD TO THE VALIDITY, PERFECTION OR EFFECT OF PERFECTION OF ANY LIEN OR IN REGARD TO PROCEDURAL MATTERS AFFECTING ENFORCEMENT OF ANY LIENS IN COLLATERAL, SUCH LAWS OF SUCH OTHER JURISDICTIONS SHALL CONTINUE TO APPLY TO THAT EXTENT.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to the Loan Documents shall be brought exclusively in the courts of the State of New York located in the City of New York, Borough of Manhattan, or of the United States of America for the Southern District of New York and, by execution and delivery of this Agreement, Borrower hereby accepts for itself and in respect of its Property, generally and unconditionally, the jurisdiction of the aforesaid courts. Notwithstanding the foregoing, Collateral Agent and Lenders shall have the right to bring any action or proceeding against Borrower (or any property of Borrower) in the court of any other jurisdiction Collateral Agent or Lenders deem necessary or appropriate in order to realize on the Collateral or other security for the Obligations. The parties hereto hereby irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, that any of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions.

(c) Service of Process. Borrower irrevocably waives personal service of any and all legal process, summons, notices and other documents and other service of process of any kind and consents to such service in any suit, action or proceeding brought in the United States of America with respect to or otherwise arising out of or in connection with any Loan Document by any means permitted by applicable requirements of law, including by the mailing thereof (by registered or certified mail, postage prepaid) to the address of Borrower specified herein (and shall be effective when such mailing shall be effective, as provided therein). Borrower agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Non-exclusive Jurisdiction. Nothing contained in this Section 11.2 shall affect the right of Collateral Agent or Lenders to serve process in any other manner permitted by applicable requirements of law or commence legal proceedings or otherwise proceed against Borrower in any other jurisdiction.

## **12. GENERAL PROVISIONS**

**12.1 Successors and Assigns.** This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's prior written consent (which may be granted or withheld in Collateral Agent's discretion, subject to Section 12.5). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in (any such sale, transfer, assignment, negotiation, or grant of a participation, a "**Lender Transfer**") all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents except, unless an Event of Default has occurred and is continuing, and other than to an Affiliate of Lender, to (i) any Person that sells, markets, manufactures or produces products and services in competition with Borrower, or (ii) any vulture fund or similar type of investor whose primary investment strategy consists of investments in and purchases of debt of distressed companies to control and dispose of the assets of such companies, each as reasonably determined by the Collateral Agent.

**12.2 Indemnification.** Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, consultants, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel for such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct.

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

**12.4 Correction of Loan Documents.** Collateral Agent may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties.



**12.5 Amendments in Writing; Integration.** (a) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature; and

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (which shall include, without limitation, any amendment or waiver to Article II of this Agreement, any conditions thereunder, or the definitions of Amortization Cap, Amortization Date, Revenue Threshold or Revenue Date; (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan or any other Obligations (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "Required Lenders" or "Supermajority Lenders" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder;; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.5 or the definitions of the terms used in this Section 12.5 insofar as the definitions affect the substance of this Section 12.5; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.5. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the immediately preceding sentence.

(b) Other than as expressly provided for in Section 12.5(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

**12.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

**12.7 Survival.** All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.8 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

**12.8 Confidentiality.** In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Term Loans (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement or have agreed to similar confidentiality terms with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent at no fault of the Lenders or the Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Collateral Agent and the Lenders may use confidential information for any purpose, including, without limitation, for the development of client databases, reporting purposes, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.8 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.8.

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

**12.10 Cooperation of Borrower.** If necessary, Borrower agrees to (i) execute any documents reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Term Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.8, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

**12.11 Public Announcement.** Borrower hereby agrees that Collateral Agent and each Lender may make a public announcement of the transactions contemplated by this Agreement, with the consent of Borrower (which consent shall not be unreasonably withheld), and may publicize the same in marketing materials, newspapers and other publications, and otherwise, and in connection therewith may use Borrower's name, tradenames and logos.

**12.12 Collateral Agent and Lender Agreement.** Collateral Agent and each Lender hereby agree to the terms and conditions set forth on Exhibit B attached hereto. Borrower acknowledges and agrees to the terms and conditions set forth on Exhibit B attached hereto.

### **12.13 Multiple Borrowers**

(a) *Borrower's Agent.* Each of the Borrowers hereby irrevocably appoints Imprimis Pharmaceuticals, Inc. as its agent, attorney-in-fact and legal representative for all purposes, including requesting disbursement of the Term Loans and receiving account statements and other notices and communications to Borrowers (or any of them) from Collateral Agent or any Lender. Collateral Agent may rely, and shall be fully protected in relying, on any request for the Term Loans, disbursement instruction, report, information or any other notice or communication made or given by Imprimis Pharmaceuticals, Inc., whether in its own name or on behalf of one or more of the other Borrowers, and Collateral Agent shall not have any obligation to make any inquiry or request any confirmation from or on behalf of any other Borrower as to the binding effect on it of any such request, instruction, report, information, other notice or communication, nor shall the joint and several character of the Borrowers' obligations hereunder be affected thereby.

(b) *Waivers.* Each Borrower hereby waives: (i) any right to require Collateral Agent to institute suit against, or to exhaust its rights and remedies against, any other Borrower or any other person, or to proceed against any property of any kind which secures all or any part of the Obligations, or to exercise any right of offset or other right with respect to any reserves, credits or deposit accounts held by or maintained with Collateral Agent or any Indebtedness of Collateral Agent or any Lender to any other Borrower, or to exercise any other right or power, or pursue any other remedy Collateral Agent or any Lender may have; (ii) any defense arising by reason of any disability or other defense of any other Borrower or any guarantor or any endorser, co-maker or other person, or by reason of the cessation from any cause whatsoever of any liability of any other Borrower or any guarantor or any endorser, co-maker or other person, with respect to all or any part of the Obligations, or by reason of any act or omission of Collateral Agent or others which directly or indirectly results in the discharge or release of any other Borrower or any guarantor or any other person or any Obligations or any security therefor, whether by operation of law or otherwise; (iii) any defense arising by reason of any failure of Collateral Agent to obtain, perfect, maintain or keep in force any Lien on, any property of any Borrower or any other person; (iv) any defense based upon or arising out of any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, liquidation or dissolution proceeding commenced by or against any other Borrower or any guarantor or any endorser, co-maker or other person, including without limitation any discharge of, or bar against collecting, any of the Obligations (including without limitation any interest thereon), in or as a result of any such proceeding. Until all of the Obligations have been paid, performed, and discharged in full, nothing shall discharge or satisfy the liability of any Borrower hereunder except the full performance and payment of all of the Obligations. If any claim is ever made upon Collateral Agent for repayment or recovery of any amount or amounts received by Collateral Agent in payment of or on account of any of the Obligations, because of any claim that any such payment constituted a preferential transfer or fraudulent conveyance, or for any other reason whatsoever, and Collateral Agent repays all or part of said amount by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Collateral Agent or any of its property, or by reason of any settlement or compromise of any such claim effected by Collateral Agent with any such claimant (including without limitation the any other Borrower), then and in any such event, each Borrower agrees that any such judgment, decree, order, settlement and compromise shall be binding upon such Borrower, notwithstanding any revocation or release of this Agreement or the cancellation of any note or other instrument evidencing any of the Obligations, or any release of any of the Obligations, and each Borrower shall be and remain liable to Collateral Agent and the Lenders under this Agreement for the amount so repaid or recovered, to the same extent as if such amount had never originally been received by Collateral Agent or any Lender, and the provisions of this sentence shall survive, and continue in effect, notwithstanding any revocation or release of this Agreement. Each Borrower hereby expressly and unconditionally waives all rights of subrogation, reimbursement and indemnity of every kind against any other Borrower, and all rights of recourse to any assets or property of any other Borrower, and all rights to any collateral or security held for the payment and performance of any Obligations, including (but not limited to) any of the foregoing rights which Borrower may have under any present or future document or agreement with any other Borrower or other person, and including (but not limited to) any of the foregoing rights which any Borrower may have under any equitable doctrine of subrogation, implied contract, or unjust enrichment, or any other equitable or legal doctrine.

(c) *Consents.* Each Borrower hereby consents and agrees that, without notice to or by Borrower and without affecting or impairing in any way the obligations or liability of Borrower hereunder, Collateral Agent may, from time to time before or after revocation of this Agreement, do any one or more of the following in its sole and absolute discretion: (i) accept partial payments of, compromise or settle, renew, extend the time for the payment, discharge, or performance of, refuse to enforce, and release all or any parties to, any or all of the Obligations; (ii) grant any other indulgence to any Borrower or any other Person in respect of any or all of the Obligations or any other matter; (iii) accept, release, waive, surrender, enforce, exchange, modify, impair, or extend the time for the performance, discharge, or payment of, any and all property of any kind securing any or all of the Obligations or any guaranty of any or all of the Obligations, or on which Collateral Agent at any time may have a Lien, or refuse to enforce its rights or make any compromise or settlement or agreement therefor in respect of any or all of such property; (iv) substitute or add, or take any action or omit to take any action which results in the release of, any one or more other Borrowers or any endorsers or guarantors of all or any part of the Obligations, including, without limitation one or more parties to this Agreement, regardless of any destruction or impairment of any right of contribution or other right of Borrower; (v) apply any sums received from any other Borrower, any guarantor, endorser, or co-signer, or from the disposition of any Collateral or security, to any Indebtedness whatsoever owing from such person or secured by such Collateral or security, in such manner and order as Collateral Agent determines in its sole discretion, and regardless of whether such Indebtedness is part of the Obligations, is secured, or is due and payable. Each Borrower consents and agrees that Collateral Agent shall be under no obligation to marshal any assets in favor of Borrower, or against or in payment of any or all of the Obligations. Each Borrower further consents and agrees that Collateral Agent shall have no duties or responsibilities whatsoever with respect to any property securing any or all of the Obligations. Without limiting the generality of the foregoing, Collateral Agent shall have no obligation to monitor, verify, audit, examine, or obtain or maintain any insurance with respect to, any property securing any or all of the Obligations.

(d) *Independent Liability.* Each Borrower hereby agrees that one or more successive or concurrent actions may be brought hereon against such Borrower, in the same action in which any other Borrower may be sued or in separate actions, as often as deemed advisable by Collateral Agent. Each Borrower is fully aware of the financial condition of each other Borrower and is executing and delivering this Agreement based solely upon its own independent investigation of all matters pertinent hereto, and such Borrower is not relying in any manner upon any representation or statement of Collateral Agent or any Lender with respect thereto. Each Borrower represents and warrants that it is in a position to obtain, and each Borrower hereby assumes full responsibility for obtaining, any additional information concerning any other Borrower's financial condition and any other matter pertinent hereto as such Borrower may desire, and such Borrower is not relying upon or expecting Collateral Agent to furnish to it any information now or hereafter in Collateral Agent's possession concerning the same or any other matter.

(e) *Subordination.* All Indebtedness of a Borrower now or hereafter arising held by another Borrower is subordinated to the Obligations and the Borrower holding the Indebtedness shall take all actions reasonably requested by Collateral Agent to effect, to enforce and to give notice of such subordination.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWER:**

IMPRIMIS PHARMACEUTICALS, INC.

By /s/ Mark L. Baum  
Name: Mark L. Baum  
Title: Chief Executive Officer

IMPRIMIS NJOF, LLC

By /s/ Mark L. Baum  
Name: Mark L. Baum  
Title: President

IMPRIMISRX CA, INC.

By /s/ Mark L. Baum  
Name: Mark L. Baum  
Title: President

IMPRIMISRX NJ, LLC

By /s/ Mark L. Baum  
Name: Mark L. Baum  
Title: President

**COLLATERAL AGENT AND LENDER:**

SWK FUNDING LLC

By: SWK HOLDING CORPORATION,  
its sole member

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

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**LENDER:**

HI IMPRIMIS, LLC

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SR-IMPRIMIS, LLC

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Loan and Security Agreement]

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SCHEDULE 1.1

Lenders and Commitments

<u>Lender</u>	<u>Term Loans)</u>	
	<u>Term Loan Commitment</u>	<u>Commitment Percentage</u>
SWK Funding LLC	\$ 9,720,000.00	60.75%
HI Imprimis, LLC	\$ 6,000,000	37.50%
SR-Imprimis, LLC	\$ 280,000	1.75%
<b>TOTAL</b>	<b>\$ 16,000,000.00</b>	<b>100.00%</b>

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## EXHIBIT A

### Description of Collateral

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

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

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

Notwithstanding the foregoing, the Collateral shall not include: (i) more than sixty five percent (65%) of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any foreign Subsidiary if Borrower demonstrates to the Collateral Agent's reasonable satisfaction that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; (ii) any equipment that is subject to a Permitted Lien permitted under clause (c) of the definition of Permitted Liens and the loan agreement or lease relating to such equipment forbids any Liens to be attached to such equipment other than a purchase money security interest and only to the extent so prohibited during the term of such lease or loan agreement; (iii) any lease, license, contract, property rights, joint venture interests, or agreement to which Borrower is a party or any of its rights or interests thereunder, in each case, if and only if, and solely to the extent that, the grant of a security interest therein shall constitute or result in a breach, termination, default, abandonment, unenforceability or invalidity thereunder or thereof (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law or principles of equity); provided that immediately upon the time at which the consequences described in the foregoing clause shall no longer exist, the Collateral shall include, and Borrower shall be deemed to have granted a security interest in, all of Borrower's right, title and interest in such lease, license, contract, property rights, joint venture interests, or agreement; (iv) Motor Vehicles for which certificates of title have been issued, and (v) any "intent-to-use" application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a "Statement of Use" pursuant to Section 1(d) of the Lanham Act or an "Amendment to Allege Use" pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law.

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## EXHIBIT B

### Collateral Agent and Lender Terms

#### 1. Appointment of Collateral Agent.

(a) Each Lender hereby appoints SWK Funding LLC (together with any successor Collateral Agent pursuant to Section 7 of this Exhibit B) as Collateral Agent under the Loan Documents and authorizes Collateral Agent to (i) execute and deliver the Loan Documents and accept delivery thereof on its behalf from Borrower, (ii) take such action on its behalf and to exercise all rights, powers and remedies and perform the duties as are expressly delegated to Collateral Agent under such Loan Documents and (iii) exercise such powers as are reasonably incidental thereto.

(b) Without limiting the generality of clause (a) above, Collateral Agent shall have the sole and exclusive right and authority (to the exclusion of the Lenders), and is hereby authorized, to (i) act as the disbursing and collecting agent for the Lenders with respect to all payments and collections arising in connection with the Loan Documents (including in any other bankruptcy, insolvency or similar proceeding), and each Person making any payment in connection with any Loan Document to any Lender is hereby authorized to make such payment to Collateral Agent, (ii) file and prove claims and file other documents necessary or desirable to allow the claims of Collateral Agent and Lenders with respect to any Obligation in any bankruptcy, insolvency or similar proceeding (but not to vote, consent or otherwise act on behalf of such Lender), (iii) act as collateral agent for Collateral Agent and each Lender for purposes of the perfection of all Liens created by the Loan Documents and all other purposes stated therein, (iv) manage, supervise and otherwise deal with the Collateral, (v) take such other action as is necessary or desirable to maintain the perfection and priority of the Liens created or purported to be created by the Loan Documents, (vi) except as may be otherwise specified in any Loan Document, exercise all remedies given to Collateral Agent and the other Lenders with respect to the Borrower and/or the Collateral, whether under the Loan Documents, applicable Requirements of Law or otherwise and (vii) execute any amendment, consent or waiver under the Loan Documents on behalf of any Lender that has consented in writing to such amendment, consent or waiver; provided, however, that Collateral Agent hereby appoints, authorizes and directs each Lender to act as collateral sub-agent for Collateral Agent and the Lenders for purposes of the perfection of all Liens with respect to the Collateral, including any Deposit Account maintained by Borrower with, and cash and Cash Equivalents held by, such Lender, and may further authorize and direct the Lenders to take further actions as collateral sub-agents for purposes of enforcing such Liens or otherwise to transfer the Collateral subject thereto to Collateral Agent, and each Lender hereby agrees to take such further actions to the extent, and only to the extent, so authorized and directed. Collateral Agent may, upon any term or condition it specifies, delegate or exercise any of its rights, powers and remedies under, and delegate or perform any of its duties or any other action with respect to, any Loan Document by or through any trustee, co-agent, employee, attorney-in-fact and any other Person (including any Lender). Any such Person shall benefit from this Exhibit B to the extent provided by Collateral Agent.

(c) Under the Loan Documents, Collateral Agent (i) is acting solely on behalf of the Lenders, with duties that are entirely administrative in nature, notwithstanding the use of the defined term "Collateral Agent", the terms "agent", "Collateral Agent" and "collateral agent" and similar terms in any Loan Document to refer to Collateral Agent, which terms are used for title purposes only, (ii) is not assuming any obligation under any Loan Document other than as expressly set forth therein or any role as agent, fiduciary or trustee of or for any Lender or any other Person and (iii) shall have no implied functions, responsibilities, duties, obligations or other liabilities under any Loan Document, and each Lender, by accepting the benefits of the Loan Documents, hereby waives and agrees not to assert any claim against Collateral Agent based on the roles, duties and legal relationships expressly disclaimed in clauses (i) through (iii) above. Except as expressly set forth in the Loan Documents, Collateral Agent shall not have any duty to disclose, and shall not be liable for failure to disclose, any information relating to Borrower or any of its Subsidiaries that is communicated to or obtained by SWK Funding LLC or any of its Affiliates in any capacity.

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## 2. Binding Effect; Use of Discretion; E-Systems.

(a) Each Lender, by accepting the benefits of the Loan Documents, agrees that (i) any action taken by Collateral Agent or Required Lenders (or, if expressly required in any Loan Document, a greater proportion of the Lenders) in accordance with the provisions of the Loan Documents, (ii) any action taken by Collateral Agent in reliance upon the instructions of Required Lenders (or, where so required, such greater proportion) and (iii) the exercise by Collateral Agent or Required Lenders (or, where so required, such greater proportion) of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of Lenders.

(b) If Collateral Agent shall request instructions from Required Lenders or all affected Lenders with respect to any act or action (including failure to act) in connection with any Loan Document, then Collateral Agent shall be entitled to refrain from such act or taking such action unless and until Collateral Agent shall have received instructions from Required Lenders or all affected Lenders, as the case may be, and Collateral Agent shall not incur liability to any Person by reason of so refraining. Collateral Agent shall be fully justified in failing or refusing to take any action under any Loan Document (i) if such action would, in the opinion of Collateral Agent, be contrary to any Requirement of Law or any Loan Document, (ii) if such action would, in the opinion of Collateral Agent, expose Collateral Agent to any potential liability under any Requirement of Law or (iii) if Collateral Agent shall not first be indemnified to its satisfaction against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Collateral Agent as a result of Collateral Agent acting or refraining from acting under any Loan Document in accordance with the instructions of Required Lenders or all affected Lenders, as applicable.

(c) Collateral Agent is hereby authorized by Borrower and each Lender to establish procedures (and to amend such procedures from time to time) to facilitate administration and servicing of the Term Loans and other matters incidental thereto. Without limiting the generality of the foregoing, Collateral Agent is hereby authorized to establish procedures to make available or deliver, or to accept, notices, documents (including, without limitation, borrowing base certificates) and similar items on, by posting to or submitting and/or completion, on E-Systems. Borrower and each Lender acknowledges and agrees that the use of transmissions via an E-System or electronic mail is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse, and Borrower and each Lender assumes and accepts such risks by hereby authorizing the transmission via E-Systems or electronic mail. Each "e-signature" on any such posting shall be deemed sufficient to satisfy any requirement for a "signature", and each such posting shall be deemed sufficient to satisfy any requirement for a "writing", in each case including pursuant to any Loan Document, any applicable provision of any Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter. All uses of an E-System shall be governed by and subject to, in addition to this Section, the separate terms, conditions and privacy policy posted or referenced in such E-System (or such terms, conditions and privacy policy as may be updated from time to time, including on such E-System) and related contractual obligations executed by Collateral Agent, Borrower and/or Lenders in connection with the use of such E-System. ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED "AS IS" AND "AS AVAILABLE". NO REPRESENTATION OR WARRANTY OF ANY KIND IS MADE BY AGENT, ANY LENDER OR ANY OF THEIR RELATED PERSONS IN CONNECTION WITH ANY E-SYSTEMS.

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**3. Collateral Agent's Reliance, Etc.** Collateral Agent may, without incurring any liability hereunder, (a) consult with any of its Related Persons and, whether or not selected by it, any other advisors, accountants and other experts (including advisors to, and accountants and experts engaged by, Borrower) and (b) rely and act upon any document and information (including those transmitted by electronic transmission) and any telephone message or conversation, in each case believed by it to be genuine and transmitted, signed or otherwise authenticated by the appropriate parties. None of Collateral Agent and its Related Persons shall be liable for any action taken or omitted to be taken by any of them under or in connection with any Loan Document, and each Lender and Borrower hereby waives and shall not assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action based thereon, except to the extent of liabilities resulting from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person (each as determined in a final, non-appealable judgment of a court of competent jurisdiction) in connection with the duties of Collateral Agent expressly set forth herein. Without limiting the foregoing, Collateral Agent: (i) shall not be responsible or otherwise incur liability for any action or omission taken in reliance upon the instructions of the Required Lenders or for the actions or omissions of any of its Related Persons, except to the extent that a court of competent jurisdiction determines in a final non-appealable judgment that Collateral Agent acted with gross negligence or willful misconduct in the selection of such Related Person; (ii) shall not be responsible to any Lender or other Person for the due execution, legality, validity, enforceability, effectiveness, genuineness, sufficiency or value of, or the attachment, perfection or priority of any Lien created or purported to be created under or in connection with, any Loan Document; (iii) makes no warranty or representation, and shall not be responsible, to any Lender or other Person for any statement, document, information, representation or warranty made or furnished by or on behalf of Borrower or any Related Person of Borrower in connection with any Loan Document or any transaction contemplated therein or any other document or information with respect to Borrower, whether or not transmitted or (except for documents expressly required under any Loan Document to be transmitted to the Lenders) omitted to be transmitted by Collateral Agent, including as to completeness, accuracy, scope or adequacy thereof, or for the scope, nature or results of any due diligence performed by Collateral Agent in connection with the Loan Documents; and (iv) shall not have any duty to ascertain or to inquire as to the performance or observance of any provision of any Loan Document, whether any condition set forth in any Loan Document is satisfied or waived, as to the financial condition of Borrower or as to the existence or continuation or possible occurrence or continuation of any Event of Default, and shall not be deemed to have notice or Knowledge of such occurrence or continuation unless it has received a notice from Borrower or any Lender describing such Event of Default that is clearly labeled "notice of default" (in which case Collateral Agent shall promptly give notice of such receipt to all Lenders, provided that Collateral Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to Collateral Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction); and, for each of the items set forth in clauses (i) through (iv) above, each Lender and Borrower hereby waives and agrees not to assert (and Borrower shall cause its Subsidiaries to waive and agree not to assert) any right, claim or cause of action it might have against Collateral Agent based thereon.

**4. Collateral Agent Individually.** Collateral Agent and its Affiliates may make loans and other extensions of credit to, acquire stock and stock equivalents of, engage in any kind of business with, Borrower or any Affiliate of Borrower as though it were not acting as Collateral Agent and may receive separate fees and other payments therefor. To the extent Collateral Agent or any of its Affiliates makes any Term Loans or otherwise becomes a Lender hereunder, it shall have and may exercise the same rights and powers hereunder and shall be subject to the same obligations and liabilities as any other Lender and the terms "Lender", "Required Lender" and any similar terms shall, except where otherwise expressly provided in any Loan Document, include, without limitation, Collateral Agent or such Affiliate, as the case may be, in its individual capacity as Lender, or as one of the Required Lenders.

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**5. Lender Credit Decision; Collateral Agent Report.** Each Lender acknowledges that it shall, independently and without reliance upon Collateral Agent, any Lender or any of their Related Persons or upon any document solely or in part because such document was transmitted by Collateral Agent or any of its Related Persons, conduct its own independent investigation of the financial condition and affairs of Borrower and make and continue to make its own credit decisions in connection with entering into, and taking or not taking any action under, any Loan Document or with respect to any transaction contemplated in any Loan Document, in each case based on such documents and information as it shall deem appropriate. Except for documents expressly required by any Loan Document to be transmitted by Collateral Agent to the Lenders, Collateral Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of Borrower or any Affiliate of Borrower that may come in to the possession of Collateral Agent or any of its Related Persons. Each Lender agrees that it shall not rely on any field examination, audit or other report provided by Collateral Agent or its Related Persons (a “**Collateral Agent Report**”). Each Lender further acknowledges that any Collateral Agent Report (a) is provided to the Lenders solely as a courtesy, without consideration, and based upon the understanding that such Lender will not rely on such Collateral Agent Report, (b) was prepared by Collateral Agent or its Related Persons based upon information provided by Borrower solely for Collateral Agent’s own internal use, and (c) may not be complete and may not reflect all information and findings obtained by Collateral Agent or its Related Persons regarding the operations and condition of Borrower. Neither Collateral Agent nor any of its Related Persons makes any representations or warranties of any kind with respect to (i) any existing or proposed financing, (ii) the accuracy or completeness of the information contained in any Collateral Agent Report or in any related documentation, (iii) the scope or adequacy of Collateral Agent’s and its Related Persons’ due diligence, or the presence or absence of any errors or omissions contained in any Collateral Agent Report or in any related documentation, and (iv) any work performed by Collateral Agent or Collateral Agent’s Related Persons in connection with or using any Collateral Agent Report or any related documentation. Neither Collateral Agent nor any of its Related Persons shall have any duties or obligations in connection with or as a result of any Lender receiving a copy of any Collateral Agent Report. Without limiting the generality of the forgoing, neither Collateral Agent nor any of its Related Persons shall have any responsibility for the accuracy or completeness of any Collateral Agent Report, or the appropriateness of any Collateral Agent Report for any Lender’s purposes, and shall have no duty or responsibility to correct or update any Collateral Agent Report or disclose to any Lender any other information not embodied in any Collateral Agent Report, including any supplemental information obtained after the date of any Collateral Agent Report. Each Lender releases, and agrees that it will not assert, any claim against Collateral Agent or its Related Persons that in any way relates to any Collateral Agent Report or arises out of any Lender having access to any Collateral Agent Report or any discussion of its contents, and agrees to indemnify and hold harmless Collateral Agent and its Related Persons from all claims, liabilities and expenses relating to a breach by any Lender arising out of such Lender’s access to any Collateral Agent Report or any discussion of its contents.

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**6. Indemnification.** Each Lender agrees to reimburse Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents) promptly upon demand for its Pro Rata Share of any out-of-pocket costs and expenses (including, without limitation, fees, charges and disbursements of financial, legal and other advisors and any taxes or insurance paid in the name of, or on behalf of, Borrower) incurred by Collateral Agent or any of its Related Persons in connection with the preparation, syndication, execution, delivery, administration, modification, amendment, consent, waiver or enforcement of, or the taking of any other action (whether through negotiations, through any work-out, bankruptcy, restructuring or other legal or other proceeding (including, without limitation, preparation for and/or response to any subpoena or request for document production relating thereto) or otherwise) in respect of, or legal advice with respect to, its rights or responsibilities under, any Loan Document. Each Lender further agrees to indemnify Collateral Agent and each of its Related Persons (to the extent not reimbursed by Borrower as required under the Loan Documents), ratably according to its Pro Rata Share, from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, to the extent not indemnified by the applicable Lender, taxes, interests and penalties imposed for not properly withholding or backup withholding on payments made to or for the account of any Lender) that may be imposed on, incurred by, or asserted against Collateral Agent or any of its Related Persons in any matter relating to or arising out of, in connection with or as a result of any Loan Document or any other act, event or transaction related, contemplated in or attendant to any such document, or, in each case, any action taken or omitted to be taken by Collateral Agent or any of its Related Persons under or with respect to the foregoing; provided that no Lender shall be liable to Collateral Agent or any of its Related Persons under this Section 6 of this Exhibit B to the extent such liability has resulted from the gross negligence or willful misconduct of Collateral Agent or, as the case may be, such Related Person, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent required by any applicable Requirement of Law, Collateral Agent may withhold from any payment to any Lender under a Loan Document an amount equal to any applicable withholding tax. If the Internal Revenue Service or any other Governmental Authority asserts a claim that Collateral Agent did not properly withhold tax from amounts paid to or for the account of any Lender for any reason, or if Collateral Agent reasonably determines that it was required to withhold taxes from a prior payment to or for the account of any Lender but failed to do so, such Lender shall promptly indemnify Collateral Agent fully for all amounts paid, directly or indirectly, by Collateral Agent as tax or otherwise, including penalties and interest, and together with all expenses incurred by Collateral Agent. Collateral Agent may offset against any payment to any Lender under a Loan Document, any applicable withholding tax that was required to be withheld from any prior payment to such Lender but which was not so withheld, as well as any other amounts for which Collateral Agent is entitled to indemnification from such Lender under the immediately preceding sentence of this Section 6 of this Exhibit B.

**7. Successor Collateral Agent.** Collateral Agent may resign at any time by delivering notice of such resignation to the Lenders and Borrower, effective on the date set forth in such notice or, if no such date is set forth therein, upon the date such notice shall be effective, in accordance with the terms of this Section 7 of this Exhibit B. If Collateral Agent delivers any such notice, the Supermajority Lenders shall have the right to appoint a successor Collateral Agent. If, after 30 days after the date of the retiring Collateral Agent's notice of resignation, no successor Collateral Agent has been appointed by the Supermajority Lenders that has accepted such appointment, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent from among the Lenders. Effective immediately upon its resignation, (a) the retiring Collateral Agent shall be discharged from its duties and obligations under the Loan Documents, (b) the Lenders shall assume and perform all of the duties of Collateral Agent until a successor Collateral Agent shall have accepted a valid appointment hereunder, (c) the retiring Collateral Agent and its Related Persons shall no longer have the benefit of any provision of any Loan Document other than with respect to any actions taken or omitted to be taken while such retiring Collateral Agent was, or because such Collateral Agent had been, validly acting as Collateral Agent under the Loan Documents, and (iv) subject to its rights under Section 2(b) of this Exhibit B, the retiring Collateral Agent shall take such action as may be reasonably necessary to assign to the successor Collateral Agent its rights as Collateral Agent under the Loan Documents. Effective immediately upon its acceptance of a valid appointment as Collateral Agent, a successor Collateral Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Collateral Agent under the Loan Documents.

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**8. Release of Collateral.** Each Lender hereby consents to the release and hereby directs Collateral Agent to release (or in the case of clause (b)(ii) below, release or subordinate) the following:

(d) any Guarantor if all of the stock of such Subsidiary owned by Borrower is sold or transferred in a transaction permitted under the Loan Documents (including pursuant to a valid waiver or consent), to the extent that, after giving effect to such transaction, such Subsidiary would not be required to guaranty any Obligations pursuant to any Loan Document; and

(e) any Lien held by Collateral Agent for the benefit of itself and the Lenders against (i) any Collateral that is sold or otherwise disposed of by Borrower in a transaction permitted by the Loan Documents (including pursuant to a valid waiver or consent), (ii) any Collateral subject to a Lien that is expressly permitted under clause (c) of the definition of the term "Permitted Lien" and (iii) all of the Collateral and Borrower, upon (A) termination of all of the Commitments, (B) payment in full in cash of all of the Obligations that Collateral Agent has theretofore been notified in writing by the holder of such Obligation are then due and payable, and (C) to the extent requested by Collateral Agent, receipt by Collateral Agent and Lenders of liability releases from Borrower in form and substance acceptable to Collateral Agent (the satisfaction of the conditions in this clause (iii), the "**Termination Date**").

**9. Setoff and Sharing of Payments.** In addition to any rights now or hereafter granted under any applicable requirement of law and not by way of limitation of any such rights, upon the occurrence and during the continuance of any Event of Default and subject to Section 10(d) of this Exhibit B, each Lender is hereby authorized at any time or from time to time upon the direction of Collateral Agent, without notice to Borrower or any other Person, any such notice being hereby expressly waived, to setoff and to appropriate and to apply any and all balances held by it at any of its offices for the account of Borrower (regardless of whether such balances are then due to Borrower) and any other properties or assets at any time held or owing by that Lender or that holder to or for the credit or for the account of Borrower against and on account of any of the Obligations that are not paid when due. Any Lender exercising a right of setoff or otherwise receiving any payment on account of the Obligations in excess of its Pro Rata Share thereof shall purchase for cash (and the other Lenders or holders shall sell) such participations in each such other Lender's or holder's Pro Rata Share of the Obligations as would be necessary to cause such Lender to share the amount so offset or otherwise received with each other Lender or holder in accordance with their respective Pro Rata Shares of the Obligations. Borrower agrees, to the fullest extent permitted by law, that (a) any Lender may exercise its right to offset with respect to amounts in excess of its Pro Rata Share of the Obligations and may purchase participations in accordance with the preceding sentence and (b) any Lender so purchasing a participation in the Term Loans made or other Obligations held by other Lenders or holders may exercise all rights of offset, bankers' lien, counterclaim or similar rights with respect to such participation as fully as if such Lender or holder were a direct holder of the Term Loans and the other Obligations in the amount of such participation. Notwithstanding the foregoing, if all or any portion of the offset amount or payment otherwise received is thereafter recovered from the Lender that has exercised the right of offset, the purchase of participations by that Lender shall be rescinded and the purchase price restored without interest.

**10. Advances; Payments; Non-Funding Lenders; Actions in Concert.**

(a) Advances; Payments. If Collateral Agent receives any payment with respect to a Term Loan for the account of Lenders on or prior to 2:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on such Business Day. If Collateral Agent receives any payment with respect to a Term Loan for the account of Lenders after 2:00 p.m. (New York time) on any Business Day, Collateral Agent shall pay to each applicable Lender such Lender's Pro Rata Share of such payment on the next Business Day.

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(b) Return of Payments.

(i) If Collateral Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Collateral Agent from Borrower and such related payment is not received by Collateral Agent, then Collateral Agent will be entitled to recover such amount (including interest accruing on such amount at the rate otherwise applicable to such Obligation) from such Lender on demand without setoff, counterclaim or deduction of any kind.

(ii) If Collateral Agent determines at any time that any amount received by Collateral Agent under any Loan Document must be returned to Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of any Loan Document, Collateral Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Collateral Agent on demand any portion of such amount that Collateral Agent has distributed to such Lender, together with interest at such rate, if any, as Collateral Agent is required to pay to Borrower or such other Person, without setoff, counterclaim or deduction of any kind and Collateral Agent will be entitled to set off against future distributions to such Lender any such amounts (with interest) that are not repaid on demand.

(c) Non-Funding Lenders.

(i) Unless Collateral Agent shall have received notice from a Lender prior to the date of any Term Loan that such Lender will not make available to Collateral Agent such Lender's Pro Rata Share of such Term Loan, Collateral Agent may assume that such Lender will make such amount available to it on the date of such Term Loan in accordance with Section 2(b) of this Exhibit B, and Collateral Agent may (but shall not be obligated to), in reliance upon such assumption, make available a corresponding amount for the account of Borrower on such date. If and to the extent that such Lender shall not have made such amount available to Collateral Agent, such Lender and Borrower severally agree to repay to Collateral Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the day such amount is made available to Borrower until the day such amount is repaid to Collateral Agent, at a rate per annum equal to the interest rate applicable to the Obligation that would have been created when Collateral Agent made available such amount to Borrower had such Lender made a corresponding payment available. If such Lender shall repay such corresponding amount to Collateral Agent, the amount so repaid shall constitute such Lender's portion of such Term Loan for purposes of this Agreement.

(ii) To the extent that any Lender has failed to fund any Term Loan or any other payments required to be made by it under the Loan Documents after any such Term Loan is required to be made or such payment is due (a "**Non-Funding Lender**"), Collateral Agent shall be entitled to set off the funding short-fall against that Non-Funding Lender's Pro Rata Share of all payments received from Borrower. The failure of any Non-Funding Lender to make any Term Loan or any payment required by it hereunder shall not relieve any other Lender (each such other Lender, an "**Other Lender**") of its obligations to make such Term Loan, but neither any Other Lender nor Collateral Agent shall be responsible for the failure of any Non-Funding Lender to make such Term Loan or make any other payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Non-Funding Lender shall not have any voting or consent rights under or with respect to any Loan Document or constitute a "Lender" (or be included in the calculation of "Required Lender" hereunder) for any voting or consent rights under or with respect to any Loan Document. At Borrower's request, Collateral Agent or a Person reasonably acceptable to Collateral Agent shall have the right with Collateral Agent's consent and in Collateral Agent's sole discretion (but Collateral Agent or any such Person shall have no obligation) to purchase from any Non-Funding Lender, and each Lender agrees that if it becomes a Non-Funding Lender it shall, at Collateral Agent's request, sell and assign to Collateral Agent or such Person, all of the Term Loan Commitment (if any), and all of the outstanding Term Loan of that Non-Funding Lender for an amount equal to the aggregate outstanding principal balance of the Term Loan held by such Non-Funding Lender and all accrued interest with respect thereto through the date of sale, such purchase and sale to be consummated pursuant to an executed assignment agreement in form and substance reasonably satisfactory to, and acknowledged by, Collateral Agent.

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

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EXHIBIT C

Loan Payment Request Form

Fax To:

Date: \_\_\_\_\_

**LOAN PAYMENT:**

IMPRIMIS PHARMACEUTICALS, INC.

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Deposit Account #) (Loan Account #)

Principal \$ \_\_\_\_\_ and/or Interest \$ \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**LOAN ADVANCE:**

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

From Account # \_\_\_\_\_ To Account # \_\_\_\_\_  
(Loan Account #) (Deposit Account #)

Amount of Advance \$ \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Print Name/Title: \_\_\_\_\_

**OUTGOING WIRE REQUEST:**

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

Beneficiary Name: \_\_\_\_\_ Amount of Wire: \$ \_\_\_\_\_

Beneficiary Bank: \_\_\_\_\_ Account Number: \_\_\_\_\_

City and State: \_\_\_\_\_

Beneficiary Bank Transit (ABA) #: \_\_\_\_\_ Beneficiary Bank Code (Swift, Sort, Chip, etc.): \_\_\_\_\_

**(For International Wire Only)**

Intermediary Bank: \_\_\_\_\_ Transit (ABA) #: \_\_\_\_\_

For Further Credit to: \_\_\_\_\_

Special Instruction: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_ 2<sup>nd</sup> Signature (if required): \_\_\_\_\_

Print Name/Title: \_\_\_\_\_ Print Name/Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Telephone #: \_\_\_\_\_ ]



EXHIBIT D

Compliance Certificate

TO: SWK FUNDING LLC, as Collateral Agent and Lender

HI IMPRIMIS, LLC AND SR-IMPRIMIS, LLC, each as Lender

FROM: IMPRIMIS PHARMACEUTICALS, INC., IMPRIMIS NJOF, LLC, IMPRIMISRX CA, INC. and IMPRIMISRX NJ, LLC (individually and collectively, jointly and severally, "**Borrower**")

The undersigned authorized officer ("**Officer**") of Imprimis Pharmaceuticals, Inc., on behalf of each Borrower hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement dated as of July 19, 2017, by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "**Loan Agreement**;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending \_\_\_\_\_ with all required covenants except as noted below;

(b) There are no Defaults or Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	<u>Reporting Covenant</u>	<u>Requirement</u>	<u>Actual</u>	<u>Complies</u>		
1)	Financial statements	Quarterly within 45 days		Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 90 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within earlier 10 days of approval or 60 days of FYE), and when revised (no later than 7 days of approval)		Yes	No	N/A
4)	8-K, 10-K and 10-Q Filings	If applicable, within 5 days of filing		Yes	No	N/A
5)	Compliance Certificate	Quarterly within 45 days		Yes	No	N/A
6)	IP Report	When required		Yes	No	N/A
7)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A
8)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		\$ _____	Yes	No	N/A

### Negative Covenant Compliance

	<u>Negative Covenant</u>	<u>Complies</u>		
1)	Dispositions (§ 7.1)	Yes	No	N/A
2)	Changes in Business, Management, Ownership, or Business Locations (§ 7.2)	Yes	No	N/A
3)	Mergers or Acquisitions (§ 7.3)	Yes	No	N/A
4)	Indebtedness (§ 7.4)	Yes	No	N/A
5)	Encumbrance (§ 7.5)	Yes	No	N/A
6)	Maintenance of Collateral Accounts (§ 7.6)	Yes	No	N/A
7)	Restricted Payments (§ 7.7)	Yes	No	N/A
8)	Investments (§ 7.8)	Yes	No	N/A
9)	Transactions with Affiliates (§ 7.9)	Yes	No	N/A
10)	Subordinated Debt (§ 7.10)	Yes	No	N/A
11)	Compliance (§ 7.11)	Yes	No	N/A
12)	Compliance with Anti-Terrorism Laws (§ 7.12)	Yes	No	N/A
13)	Material Agreements (§ 7.13)	Yes	No	N/A
14)	Minimum Cash (§ 7.14) (please provide documentation)	Yes	No	N/A
15)	Minimum EBITDA (§ 7.15) (please provide documentation)	Yes	No	N/A

**Deposit and Securities Accounts***(Please list all accounts; attach separate sheet if additional space needed)*

	<b>Institution Name</b>	<b>Account Number</b>	<b>New Account?</b>		<b>Account Control Agreement in place?</b>	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

**Other Matters**

1)	Have there been any changes in any Key Person since the last Compliance Certificate?	Yes	No
2)	Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new or pending claims or causes of action against Borrower that involve more than Two Hundred Fifty Thousand Dollars (\$250,000.00)?	Yes	No
4)	Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate.	Yes	No
5)	Has Borrower or any Subsidiary entered into or amended any Material Agreement? If yes, please explain and provide a copy of the Material Agreement(s) and/or amendment(s).	Yes	No
6)	Has Borrower provided the Collateral Agent with all notices required to be delivered under Sections 6.2(a) and 6.2(b) of the Loan Agreement?	Yes	No
7)	Have there been any material updates to the contents of the Perfection Certificate last delivered? If yes, please explain.	Yes	No

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**Exceptions**

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

IMPRIMIS PHARMACEUTICALS, INC., on behalf of each Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date:

**COLLATERAL AGENT USE ONLY**

Received by: \_\_\_\_\_ Date: \_\_\_\_\_

Verified by: \_\_\_\_\_ Date: \_\_\_\_\_

Compliance Status: Yes      No

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### **Imprimis Pharmaceuticals Announces \$16 Million Debt Facility with SWK Holdings**

San Diego, CA – July 20, 2017 — Imprimis Pharmaceuticals, Inc. (NASDAQ: IMMY), an ophthalmology-focused pharmaceutical company, today announced it has entered into a \$16 million senior secured non-dilutive term loan agreement with SWK Funding LLC and its partners. SWK Funding LLC is a subsidiary of SWK Holdings Corporation, a healthcare focused investment firm. The company plans to use the proceeds to retire its existing \$13 million term loan with an affiliate of Life Sciences Alternative Funding LLC, and provide additional working capital for its growing ophthalmic formulation pipeline.

The loan was fully funded at closing with a five-year term bearing interest, initially, at 12 percent per annum with interest-only payments for up to the first eighteen months (payable quarterly). The interest-only period may be adjusted based upon Imprimis meeting certain revenue requirements.

Winston Black, CEO of SWK Holdings stated, “We have enjoyed working with the Imprimis team during our extensive due diligence process and look forward to supporting the company as it continues to execute its growth strategy. Imprimis’ innovative ophthalmic formulations have significant opportunities in large markets and we believe in the company’s ability to achieve their vision of delivering innovative medicines to physicians and patients at affordable prices.”

Mark L. Baum, CEO of Imprimis, said, “We are pleased to partner with the SWK team, a firm renowned for its healthcare investing expertise, and appreciate their thorough understanding of our business and the confidence they have placed in our long-term growth potential. This debt facility provides us with a non-dilutive source of capital at favorable terms and we believe adequate working capital to enable us to reach expected profitability in the near term.”

WestCape Advisors, a division of KEMA Partners LLC, served as exclusive financial advisor to Imprimis in connection with the financing.

#### **About SWK Holdings Corporation**

SWK Holdings Corporation (SWKH.OB) is a specialized finance company with a focus on the global healthcare sector. SWK partners with ethical product marketers and royalty holders to provide flexible financing solutions at an attractive cost of capital to create long-term value for both SWK’s business partners and its investors. SWK believes its financing structures achieve an optimal partnership for companies, institutions and inventors seeking capital for expansion or capital and estate planning by allowing its partners to monetize future cash flow with minimal dilution to their equity stakes. Additional information is available on the company’s website at [www.swkhold.com](http://www.swkhold.com).

#### **About Imprimis Pharmaceuticals**

Imprimis Pharmaceuticals, Inc. (NASDAQ: IMMY) is a pharmaceutical company dedicated to producing and dispensing high quality innovative medications in all 50 states. The company’s unique business model increases patient access and affordability to many critical medicines. Headquartered in San Diego, California, Imprimis owns and operates three production and dispensing facilities located in California, and New Jersey. For more information about Imprimis, please visit the corporate website at [www.ImprimisRx.com](http://www.ImprimisRx.com).

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## Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the U.S. Private Securities Litigation Reform Act of 1995. Any statements in this release that are not historical facts may be considered such “forward looking statements.” Forward-looking statements are based on management’s current expectations and are subject to risks and uncertainties which may cause results to differ materially and adversely from the statements contained herein. Some of the potential risks and uncertainties that could cause actual results to differ from those predicted include our ability to make commercially available our compounded formulations and technologies in a timely manner or at all; physician interest in prescribing our formulations; risks related to our compounding pharmacy operations; our ability to enter into other strategic alliances, including arrangements with pharmacies, physicians and healthcare organizations for the development and distribution of our formulations; our ability to obtain intellectual property protection for our assets; our ability to accurately estimate our expenses and cash burn, and raise additional funds when necessary; risks related to research and development activities; the projected size of the potential market for our technologies and formulations; unexpected new data, safety and technical issues; regulatory and market developments impacting compounding pharmacies, outsourcing facilities and the pharmaceutical industry; competition; and market conditions. These and additional risks and uncertainties are more fully described in Imprimis’ filings with the Securities and Exchange Commission, including its Annual Report on Form 10-K and its Quarterly Reports on Form 10-Q. Such documents may be read free of charge on the SEC’s web site at [www.sec.gov](http://www.sec.gov). Undue reliance should not be placed on forward looking statements, which speak only as of the date they are made. Except as required by law, Imprimis undertakes no obligation to update any forward-looking statements to reflect new information, events or circumstances after the date they are made, or to reflect the occurrence of unanticipated events.

*Other than drugs compounded at a registered outsourcing facility, all Imprimis compounded formulations may only be prescribed pursuant to a physician prescription for an individually identified patient consistent with federal and state laws.*

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Source: Imprimis Pharmaceuticals, Inc.

### Investor Contact

Jon Patton

[jpatton@imprimispharma.com](mailto:jpatton@imprimispharma.com)

858-704-4587

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