

TERM LOAN AGREEMENT

dated as of

April 30, 2014

between

AFT PHARMACEUTICALS LIMITED
as Borrower,

The SUBSIDIARY GUARANTORS from Time to Time Party Hereto,

and

Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P.

as Lenders

U.S. \$30,000,000

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TERM LOAN AGREEMENT, dated as of April 30, 2014 (this “**Agreement**”), among AFT Pharmaceuticals Limited, a New Zealand company (“**Borrower**”), the Subsidiary Guarantors from time to time party hereto and the Lenders from time to time party hereto.

WITNESSETH:

Borrower has requested the Lenders to make term loans to Borrower, and the Lenders are prepared to make such loans on and subject to the terms and conditions hereof. Accordingly, the parties agree as follows:

SECTION 1 DEFINITIONS

1.01 Certain Defined Terms. As used herein, the following terms have the following respective meanings:

“**Accounting Change Notice**” has the meaning set forth in **Section 1.04(a)**.

“**Act**” has the meaning set forth in **Section 12.17**.

“**Acquisition**” means any transaction, or any series of related transactions, by which any Person directly or indirectly, by means of a take-over bid, tender offer, share or other capital stock purchase, amalgamation, merger, purchase of assets, or similar transaction having the same effect as any of the foregoing, (a) acquires any business or all or substantially all of the assets of any Person engaged in any business, (b) acquires control of securities of a Person engaged in a business representing more than 50% of the ordinary voting power for the election of directors or other governing body if the business affairs of such Person are managed by a board of directors or other governing body, or (c) acquires control of more than 50% of the ownership interest in any Person engaged in any business that is not managed by a board of directors or other governing body.

“**Affected Lender**” has the meaning set forth in **Section 2.07(a)**.

“**Affiliate**” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**AFT AUS**” means AFT Pharmaceuticals PTY LTD, an Australian Proprietary Company, Limited by Shares.

“**AFT Orphan**” means AFT Orphan Pharmaceuticals Limited, a New Zealand company.

“**Agreement**” has the meaning set forth in the introduction hereto.

“**Asset Sale**” is defined in **Section 9.09**.

“**Asset Sale Net Proceeds**” means the aggregate amount of the cash proceeds received from any Asset Sale, net of any bona fide costs (including taxes on, or arising out of, the Asset

Sale) incurred in connection with such Asset Sale, plus, with respect to any non-cash proceeds of an Asset Sale, the fair market value of such non cash proceeds as determined by the Majority Lenders, acting reasonably.

“Assignment and Acceptance” means an assignment and acceptance entered into by a Lender and an assignee of such Lender.

“Bankruptcy Code” means Title II of the United States Code entitled “Bankruptcy.”

“Borrower” has the meaning set forth in the introduction hereto.

“Borrower Party” has the meaning set forth in **Section 12.03(b)**.

“Borrowing” means a borrowing consisting of Loans made on the same day by the Lenders according to their respective Commitments (including without limitation a borrowing of a PIK Loan).

“Borrowing Date” means the date of each Borrowing.

“Borrowing Notice Date” means, (i) in the case of the first Borrowing, a date that is at least twelve Business Days prior to the Borrowing Date of such Borrowing and, (ii) in the case of a subsequent Borrowing, a date that is at least twenty Business Days prior to the Borrowing Date of such Borrowing.

“Business Day” means a day (other than a Saturday or Sunday) on which commercial banks are not authorized or required to close in New York City or Auckland, New Zealand.

“Capital Lease Obligations” means, as to any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real and/or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

“Change of Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group of Persons acting jointly or otherwise in concert of capital stock representing more than 50% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of Borrower; *provided that* any transaction part of or incidental to a Qualifying IPO (including the acquisition of Equity Interests by the underwriters in connection therewith), shall be deemed not to trigger this **clause (a)** so long as no new group or person shall thereby acquire, directly or indirectly, 50% or more of the Equity Interests of Borrower, (b) during any period of twelve (12) consecutive calendar months, the occupation of a majority of the seats (other than vacant seats) on the board of directors of Borrower by Persons who were neither (i) nominated by the board of directors or shareholders of Borrower, nor (ii) appointed by directors so nominated, or (c) the acquisition of direct or indirect Control of Borrower by any Person or group of Persons acting jointly or otherwise in concert; in each case whether as a result of a tender or exchange offer, open market purchases, privately negotiated purchases or otherwise; provided however, that any restructuring of Atkinson Family Trust shall

not be deemed a Change of Control.

“**Claims**” includes claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions, informations (brought by a public prosecutor without grand jury indictment) or other similar processes, assessments or reassessments.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

“**Collateral**” means any Property in which a Lien is purported to be granted under any of the Security Documents (or all such Property, as the context may require).

“**Competitor**” means any Person which is engaged in a business involving the development, supply, contract manufacture, distribution, marketing and/or sale by any means of any prescription or over-the-counter pharmaceutical products which compete in the same markets with pharmaceutical products licensed, supplied, distributed, marketed or sold by or on behalf of Borrower.

“**Commitment**” means, with respect to each Lender, the obligation of such Lender to make Loans to Borrower in accordance with the terms and conditions of this Agreement, which commitment is in the amount set forth opposite such Lender’s name on **Schedule 1** under the caption “Commitment”, as such Schedule may be amended from time to time. The aggregate Commitments on the date hereof equal \$30,000,000. For purposes of clarification, the amount of any PIK Loans shall not reduce the amount of the available Commitment.

“**Commitment Period**” means the period from and including the date hereof and through and including October 30, 2016.

“**Compliance Certificate**” has the meaning given to such term in **Section 8.01(d)**.

“**Contracts**” means contracts, licenses, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements or engagements under which a Person has, or will have, any liability or contingent liability (in each case, whether written or oral, express or implied).

“**Control**” means, in respect of a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“**Control Agent**” means the Lender acting as “Control Agent” under the Security Agreement.

“**Copyrights**” means all copyrights, copyright registrations and applications for copyright registrations, including all renewals and extensions thereof, all rights to recover for past, present or future infringements thereof and all other rights whatsoever accruing thereunder or pertaining thereto.

“**CPS**” means Borrower’s Series A Preferred Shares (as defined in the Equity Investment Agreement) held by the Lenders.

“**CPS Document**” means (i) the Equity Investment Agreement and (ii) the Constitution of Borrower.

“**CRPPF**” means Capital Royalty Partners II – Parallel Fund “A” L.P.

“**Cure Amount**” has the meaning set forth in **Section 10.03(a)**.

“**Cure Right**” has the meaning set forth in **Section 10.03(a)**.

“**Deed of Priority**” means that certain Deed of Priority among Borrower, AFT AUS, Bank of New Zealand, (if applicable) National Australia Bank Limited and the Lenders, to be executed and delivered pursuant to **Section 6.01(f)(x)**, as amended, restated, supplemented or otherwise modified.

“**Default**” means any Event of Default and any event that, upon the giving of notice, the lapse of time or both, would constitute an Event of Default.

“**Default Rate**” has the meaning set forth in **Section 3.02(b)**.

“**Defaulting Lender**” means, subject to **Section 2.06**, any Lender that (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans, within three (3) Business Days of the date required to be funded by it hereunder, (b) has notified Borrower or any Lender that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or under other agreements in which it commits to extend credit, or (c) has, or has a direct or indirect parent company that has, (i) become the subject of an Insolvency Proceeding, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

“**Dollars**” and “**\$**” means lawful money of the United States of America.

“**Eligible Transferee**” means and includes a commercial bank, an insurance company, a finance company, a financial institution, any investment fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act) that is principally in the business of managing investments or holding assets for investment purposes; *provided that* no Competitor or Subsidiary thereof shall constitute an Eligible Transferee.

“**Environmental Law**” means any federal, state, provincial or local governmental law, rule, regulation, order, writ, judgment, injunction or decree relating to pollution or protection of the environment or the treatment, storage, disposal, release, threatened release or handling of hazardous materials, and all local laws and regulations related to environmental matters and any

specific agreements entered into with any competent authorities which include commitments related to environmental matters.

“Equity Cure Right” has the meaning set forth in **Section 10.03(a)**.

“Equity Interest” shall mean, with respect to any Person, any and all shares, interests, participations or other equivalents, including membership interests (however designated, whether voting or nonvoting), of equity of such Person, including, if such Person is a partnership, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of property of, such partnership, but excluding debt securities convertible or exchangeable into such equity.

“Equity Investment Agreement” means that certain Equity Investment Agreement, dated as of the date hereof, among Borrower and the Lenders, as amended, restated, supplemented or otherwise modified.

“Equivalent Amount” means, with respect to an amount denominated in one currency, the amount in another currency that could be purchased by the amount in the first currency determined by reference to the Exchange Rate at the time of determination.

“Event of Default” has the meaning set forth in **Section 11.01**.

“Exchange Rate” means the rate at which any currency (the ***“Pre-Exchange Currency”***) may be exchanged into another currency (the ***“Post-Exchange Currency”***), as set forth on such date on the relevant Reuters screen at or about 11:00 a.m. (Central time) on such date. In the event that such rate does not appear on the Reuters screen, the “Exchange Rate” with respect to exchanging such Pre-Exchange Currency into such Post-Exchange Currency shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by Borrower and the Majority Lenders or, in the absence of such agreement, such Exchange Rate shall instead be determined by the Majority Lenders by any reasonable method as they deem applicable to determine such rate, and such determination shall be conclusive absent manifest error.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes, in each case imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax, (b) Other Connection Taxes, (c) U.S. federal and state withholding Taxes that are imposed on amounts payable to a Lender to the extent that the obligation to withhold amounts existed on the date that such Lender became a “Lender” under this Agreement, except in each case to the extent such Lender is a direct or indirect assignee of any other Lender that was entitled, at the time the assignment of such other Lender became effective, to receive additional amounts under **Section 5.03**, (d) any Taxes imposed in connection with FATCA, and (e) Taxes attributable to such Recipient’s failure to comply with **Section 5.03(e)**.

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

“**Foreign Lender**” means a Lender that is not a U.S. Person.

“**GAAP**” means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 of New Zealand. Subject to **Section 1.02**, all references to “GAAP” shall be to GAAP applied consistently with the principles used in the preparation of the financial statements described in **Section 7.04(a)**.

“**Governmental Approval**” means 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**” means any nation, government, branch of power (whether executive, legislative or judicial), state, province or municipality or other political subdivision thereof and any entity exercising executive, legislative, judicial, monetary, regulatory or administrative functions of or pertaining to government, including without limitation regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, courts, bodies, boards, tribunals and dispute settlement panels, and other law-, rule- or regulation-making organizations or entities of any State, region, territory, county, city or other political subdivision of the United States, New Zealand, Australia, Malaysia or Singapore.

“**Guarantee**” of or by any Person (the “**guarantor**”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“**Guarantee Assumption Agreement**” means a Guarantee Assumption Agreement substantially in the form of **Exhibit A** by an entity that, pursuant to **Section 8.12(a)**, is required to become a “Subsidiary Guarantor” hereunder in favor of the Lenders.

“**Guaranteed Obligations**” has the meaning set forth in **Section 13.01**.

“**Hazardous Material**” means any substance, element, chemical, compound, product, solid, gas, liquid, waste, by-product, pollutant, contaminant or material which is hazardous or toxic, and includes, without limitation, (a) asbestos, polychlorinated biphenyls and petroleum

(including crude oil or any fraction thereof) and (b) any material classified or regulated as “hazardous” or “toxic” or words of like import pursuant to an Environmental Law.

“**Hedging Agreement**” means any interest rate exchange agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or obligations of such Person with respect to deposits or advances of any kind by third parties, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty (j) obligations under any Hedging Agreement currency swaps, forwards, futures or derivatives transactions, and (k) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“**Indemnified Party**” has the meaning set forth in **Section 12.03(b)**.

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

“**Insolvency Proceeding**” means (i) any case, action or proceeding before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or (ii) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors, or other, similar arrangement in respect of any Person’s creditors generally or any substantial portion of such Person’s creditors, in each case undertaken under U.S. Federal, state or foreign law, including the Bankruptcy Code.

“**Intellectual Property**” means all Patents, Trademarks, Copyright, and Technical Information, whether registered or not, domestic and foreign. Intellectual Property shall include all:

- (a) applications or registrations relating to such Intellectual Property;

(b) rights and privileges arising under applicable Laws with respect to such Intellectual Property;

(c) rights to sue for past, present or future infringements of such Intellectual Property; and

(d) rights of the same or similar effect or nature in any jurisdiction corresponding to such Intellectual Property throughout the world.

“Interest-Only Period” means the period from and including the first Borrowing Date and through and including the sixteenth (16th) Payment Date following the first Borrowing Date.

“Interest Period” means, with respect to each Borrowing, (i) initially, the period commencing on and including the Borrowing Date thereof and ending on and including the next Payment Date, and, (ii) thereafter, each period beginning on and including the day following the immediately preceding Interest Period and ending on and including the next succeeding Payment Date.

“Invention” means any novel, inventive and useful art, apparatus, method, process, machine (including article or device), manufacture or composition of matter, or any novel, inventive and useful improvement in any art, method, process, machine (including article or device), manufacture or composition of matter.

“Investment” means, for any Person: (a) the acquisition (whether for cash, property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any “short sale” or any sale of any securities at a time when such securities are not owned by the Person entering into such sale); (b) the making of any deposit with, or advance, loan or other extension of credit to, any other Person (including the purchase of property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such property to such Person), but excluding any such advance, loan or extension of credit having a term not exceeding 90 days arising in connection with the sale of inventory or supplies by such Person in the ordinary course of business; (c) the entering into of any Guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to such Person; or (d) the entering into of any Hedging Agreement.

“IRS” means the U.S. Internal Revenue Service or any successor agency, and to the extent relevant, the U.S. Department of the Treasury.

“Knowledge” means the actual knowledge of any Responsible Officer of any Person or, so long as he or she is an officer of Borrower and is employed by Borrower or its Subsidiaries, the actual knowledge of Hartley Atkinson, Marree Atkinson or Malcom Tubby.

“Landlord Consent” means a consent agreement, in form and substance satisfactory to Lenders, under which, *inter alia*, a landlord of real property leased by an Obligor acknowledges Lenders’ first priority lien on or assignment of such Obligor’s lease of the premises.

“*Laws*” means, collectively, all international, foreign, federal, state, provincial, territorial, municipal and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“*Lenders*” means Capital Royalty Partners II L.P. and CRPPF, together with their successors and each assignee of a Lender pursuant to **Section 12.05(b)** and “Lender” means any one of them.

“*Lien*” means any mortgage, lien, pledge, charge or other security interest, or any lease, title retention agreement, mortgage, restriction, easement, right-of-way, option or adverse claim (of ownership or possession) or other encumbrance of any kind or character whatsoever or any preferential arrangement that has the practical effect of creating a security interest (including, without limitation, a “security interest” for the purposes of the Personal Property Securities Act 1999 of New Zealand).

“*Liquidity*” means the balance of unencumbered cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first or second priority perfected security interest.

“*Loan*” means (i) each loan advanced by a Lender pursuant to **Section 2.01** and (ii) each PIK Loan deemed to have been advanced by a Lender pursuant to **Section 3.02(d)**. For purposes of clarification, any calculation of the aggregate outstanding principal amount of Loans on any date of determination shall include both the aggregate principal amount of loans advanced pursuant to **Section 2.01** and not yet repaid, and all PIK Loans deemed to have been advanced and not yet repaid, on or prior to such date of determination.

“*Loan Documents*” means, collectively, this Agreement, the Notes, the Security Documents, any subordination agreement or any intercreditor agreement entered into by Lenders with any other creditors of Obligors, and any other present or future document, instrument, agreement or certificate executed by Obligors for the benefit of Lenders in connection with this Agreement or any of the other Loan Documents, all as amended, restated, supplemented or otherwise modified.

“*Loss*” means judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all costs incurred in investigating or pursuing any Claim or any proceeding relating to any Claim.

“*Majority Lenders*” means, at any time, Lenders having at such time in excess of 50% of the aggregate Commitments (or, if such Commitments are terminated, the outstanding principal amount of the Loans) then in effect, ignoring, in such calculation, the Commitments of and

outstanding Loans owing to any Defaulting Lender.

“Margin Stock” means “margin stock” within the meaning of Regulations U and X.

“Material Adverse Change” and ***“Material Adverse Effect”*** mean a material adverse change in or effect on (i) the business, condition (financial or otherwise), operations, performance, Property of Borrower and its Subsidiaries taken as a whole, (ii) the ability of any Obligor to perform its obligations under the Loan Documents, or (iii) the legality, validity, binding effect or enforceability of the Loan Documents or the rights and remedies of the Lenders under any of the Loan Documents; *provided, however, that* no any adverse change in or effect any of the following shall be deemed to constitute or have a Material Adverse Change or Material Adverse Effect: (i) general business or economic conditions, (ii) national or international political or social conditions, including the engagement by the United States or New Zealand in hostilities, whether or not pursuant to the declaration of a national emergency or war or the occurrence of any military or terrorist attack upon the United States or New Zealand, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or New Zealand, (iii) financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index), (iv) changes in GAAP, and (v) changes in law, rules, regulations, orders, or other binding directives issued by any governmental entity.

“Material Agreements” means (A) the agreements which are listed in **Schedule 7.14** (as updated by Borrower from time to time in accordance with **Section 7.20** to list all such agreements that meet the description set forth in clause (B) of this definition) and (B) all other agreements held by the Obligors from time to time, the absence or termination of any of which would reasonably be expected to result in a Material Adverse Effect; *provided, however, that* “Material Agreements” exclude all: (i) licenses implied by the sale of a product; and (ii) paid-up licenses for commonly available software programs under which an Obligor is the licensee. “Material Agreement” means any one such agreement.

“Material Indebtedness” means, at any time, any Indebtedness of any Obligor, the outstanding principal amount of which, individually or in the aggregate, exceeds \$300,000 (or the Equivalent Amount in other currencies).

“Material Intellectual Property” means, the Obligor Intellectual Property described in **Schedule 7.05(c)** and any other Obligor Intellectual Property after the date hereof the loss of which could reasonably be expected to have a Material Adverse Effect.

“Maturity Date” means the earlier to occur of (i) the twenty-fourth (24th) Payment Date following the first Borrowing Date, and (ii) the date on which the Loans are accelerated pursuant to **Section 11.02**.

“Maximum Rate” has the meaning set forth in **Section 12.18**.

“Minimum Required Revenue” has the meaning set forth in **Section in 10.02**.

“Non-Consenting Lender” has the meaning set forth in **Section 2.07(a)**.

“Non-Disclosure Agreement” has the meaning set forth in **Section 12.16**.

“Note” means a promissory note executed and delivered by Borrower to the Lenders in accordance with **Section 2.04** or **3.02(d)**.

“Notice of Borrowing” has the meaning set forth in **Section 2.02**.

“Obligations” means, with respect to any Obligor, all amounts, obligations, liabilities, covenants and duties of every type and description owing by such Obligor to any Lender, any other indemnitee hereunder or any participant, arising out of, under, or in connection with, any Loan Document, whether direct or indirect (regardless of whether acquired by assignment), absolute or contingent, due or to become due, whether liquidated or not, now existing or hereafter arising and however acquired, and whether or not evidenced by any instrument or for the payment of money, including, without duplication, (i) if such Obligor is Borrower, all Loans, (ii) all interest, whether or not accruing after the filing of any petition in bankruptcy or after the commencement of any insolvency, reorganization or similar proceeding, and whether or not a claim for post-filing or post-petition interest is allowed in any such proceeding, and (iii) all other fees, expenses (including fees, charges and disbursement of counsel), interest, commissions, charges, costs, disbursements, indemnities and reimbursement of amounts paid and other sums chargeable to such Obligor under any Loan Document.

“Obligor Intellectual Property” means Intellectual Property owned by or licensed to any of the Obligors.

“Obligors” means, collectively, Borrower and the Subsidiary Guarantors and their respective successors and permitted assigns.

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 5.03(g)**).

“Participant” has the meaning set forth in **Section 12.05(e)**.

“Patents” means all patents and patent applications, including the inventions and improvements described and claimed therein together with the reissues, divisions, continuations, renewals, extensions and continuations in part thereof, all income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, all damages and payments for past or future infringements thereof and rights to sue therefor, and all rights corresponding

thereto throughout the world.

“Payment Date” means each March 31, June 30, September 30, December 31 and the Maturity Date, commencing on the first of the Payment Date to occur following the first Borrowing Date; *provided that*, if any such date shall occur on a day that is not a Business Day, the applicable Payment Date shall be the next preceding Business Day.

“Permitted Acquisition” means any acquisition by Borrower or any of its wholly-owned Subsidiaries, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the Equity Interests of, or a business line or unit or a division of, any Person; *provided that*:

- (a) immediately prior to, and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;
- (b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable Governmental Approvals;
- (c) in the case of the acquisition of all of the Equity Interests of such Person, all of the Equity Interests (except for any such securities in the nature of directors’ qualifying shares required pursuant to applicable Law) acquired, or otherwise issued by such Person or any newly formed Subsidiary of Borrower in connection with such acquisition, shall be owned 100% by Borrower, a Subsidiary Guarantor or any other Subsidiary, and Borrower shall have taken, or caused to be taken, as of the date such Person becomes a Subsidiary of Borrower, each of the actions set forth in **Section 8.12**, if applicable;
- (d) Borrower and its Subsidiaries shall be in compliance with the financial covenants set forth in **Section 10.01** and **Section 10.02** on a *pro forma* basis after giving effect to such acquisition; and
- (e) such Person (in the case of an acquisition of Equity Interests) or assets (in the case of an acquisition of assets or a division) (i) shall be engaged or used, as the case may be, in the same business or lines of business in which Borrower and/or its Subsidiaries are engaged or (ii) shall have a similar customer base as Borrower and/or its Subsidiaries.

“Permitted Cash Equivalent Investments” means (i) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than two (2) years from the date of acquisition and (ii) 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.

“Permitted Cure Debt” means Indebtedness incurred in connection with the exercise of the Subordinated Debt Cure Right and (i) that is governed by documentation containing representations, warranties, covenants and events of default no more burdensome or restrictive than those contained in the Loan Documents, (ii) that has a maturity date later than the Maturity Date, (iii) in respect of which no cash payments of principal or interest are required prior to the Maturity Date, and (iv) in respect of which the holders have agreed in favor of Borrower and Lenders (A) that prior to the date on which the Commitments have expired or been terminated

and all Obligations have been paid in full indefeasibly in cash, such holders will not exercise any remedies available to them in respect of such Indebtedness, and (B) that such Indebtedness is unsecured, and (C) to terms of subordination in substantially the form attached hereto as **Exhibit F** or otherwise satisfactory to the Majority Lenders.

“Permitted Indebtedness” means any Indebtedness permitted under **Section 9.01**.

“Permitted Liens” means any Liens permitted under **Section 9.02**.

“Permitted Priority Debt” means Indebtedness of the Borrower and AFT AUS, in an amount not to exceed at any time the sum of (i) 80% of the aggregate face amount at such time of the Borrower and its Subsidiaries' unpaid accounts receivable (excluding any such accounts receivable for which payment is overdue by more than 90 days) and (ii) 50% of the aggregate value of all inventory of the Obligors (provided that such inventory levels are consistent with the business plan approved by the Board of Directors of Borrower); *provided that* (a) such Indebtedness, if secured, may be secured (x) on a basis senior to the Liens securing the Obligations solely to the extent of the Obligors' accounts receivable and inventory and by the residence of Hartley Atkinson and that certain 2011 Lexus LX570 5.7P Wagon 6A Station Wagon (NZ Registration Number: GBP349; VIN: JTJHY00W304071019), and (y) on a basis junior to the Lien securing the Obligations, by any assets of the Obligors, and (b) the holders or lenders thereof have executed and delivered to Lenders an agreement in substantially the form of the Deed of Priority (with such changes (if any) as are satisfactory to the Majority Lenders).

“Permitted Priority Liens” means (i) Liens permitted under **Section 9.02(c), (d), (e), (f), (g) or (k)**, and (ii) Liens permitted under **Section 9.02(b)** provided that such Liens are also of the type described in **Section 9.02(c), (d), (e), (f), (g) or (k)**.

“Permitted Refinancing” means, with respect to any Indebtedness, any extensions, renewals and replacements of such Indebtedness; *provided that* such extension, renewal or replacement (i) shall not increase the outstanding principal amount of such Indebtedness, (ii) contains terms relating to outstanding principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole no less favorable in any material respect to Borrower and its Subsidiaries or the Lenders than the terms of any agreement or instrument governing such existing Indebtedness, (iii) shall have an applicable interest rate which does not exceed the overall rate of interest of the Indebtedness being replaced, and (iv) shall not contain any new requirement to grant any lien or security or to give any guarantee that was not an existing requirement of such Indebtedness.

“Person” means any individual, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Authority or other entity of whatever nature.

“PIK Loan” has the meaning set forth in **Section 3.02(d)**.

“PIK Period” means the period beginning on the first Borrowing Date through and including the earlier to occur of (i) the last day of the Interest-Only Period and (ii) the date on which any Default shall have occurred (*provided that* if such Default shall have been cured or waived, the PIK Period shall resume until the earlier to occur of the next Default and the last day

of the Interest-Only Period).

“PIK Share” has the meaning set forth in **Section 3.02(d)**.

“Prepayment Premium” has the meaning set forth in **Section 3.03(a)**.

“Property” of any Person means any property or assets, or interest therein, of such Person.

“Proportionate Share” means, with respect to any Lender, the percentage obtained by dividing (a) the sum of the Commitment (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of such Lender then in effect by (b) the sum of the Commitments (or, if the Commitments are terminated, the outstanding principal amount of the Loans) of all Lenders then in effect.

“Qualifying IPO” means a public offering of shares in Borrower (whether by way of the issue of new shares by Borrower with or without the concurrent sale of existing shares by all or some of Borrower’s shareholders) which results in a market capitalisation of Borrower of at least US\$150 million or its equivalent in New Zealand dollars or Australian dollars.

“Real Property Security Documents” means each Landlord Consent, and any mortgage or deed of trust or any other real property security document executed or required hereunder to be executed by any Obligor and granting a security interest in real Property owned by any Obligor in favor of the Lenders.

“Recipient” means any Lender or any other recipient of any payment to be made by or on account of any Obligation.

“Redemption Date” has the meaning set forth in **Section 3.03(a)**.

“Redemption Price” has the meaning set forth in **Section 3.03(a)**.

“Register” has the meaning set forth in **Section 12.05(d)**.

“Regulation T” means Regulation T of the Board of Governors of the Federal Reserve System, as amended.

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System, as amended.

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System, as amended.

“Regulatory Approvals” means any registrations, licenses, authorizations, permits or approvals issued by any Governmental Authority and applications or submissions related to any of the foregoing.

“Requirement of Law” means, as to any Person, any statute, law, treaty, rule or

regulation or determination, order, injunction or judgment of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its Properties or revenues.

“Responsible Officer” of any Person means each of the president, chief executive officer, chief financial officer of such Person.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interest of Borrower or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such shares of capital stock of Borrower or any of its Subsidiaries or any option, warrant or other right to acquire any such shares of capital stock of Borrower or any of its Subsidiaries.

“Restrictive Agreement” has the meaning set forth in **Section 7.15**.

“Revenue” of a Person means all revenue properly recognized under GAAP, consistently applied, less all rebates, discounts and other price allowances.

“Security Agreement” means any or all, as the context may require, of (i) the Security Agreement, in the form attached hereto as Exhibit G, among Borrower, AFT Orphan and the Lenders, (ii) a Security Agreement, in form and substance satisfactory to the Lenders, among AFT AUS, and the Lenders, (iii) any Security Agreement delivered pursuant to **Section 8.12(a)(ii)**, among AFT Pharmaceuticals Singapore PTE. LTD., a Singaporean private company limited by shares, and the Lenders, (iv) any Security Agreement delivered pursuant to **Section 8.12(a)(ii)**, among AFT Pharmaceuticals (SE Asia) SND. BHD., a Malaysian private limited liability company, and the Lenders, in each case, granting a security interest in the applicable Obligor’s personal Property in favor of the Lenders.

“Security Documents” means, collectively, the Security Agreement, each Short-Form IP Security Agreement, each Real Property Security Document, and each other security document, control agreement or financing statement required or recommended to perfect Liens in favor of the Lenders.

“Short-Form IP Security Agreements” means short-form copyright, patent or trademark (as the case may be) security agreements entered into by one or more Obligor in favor of the Lenders, each in form and substance satisfactory to the Majority Lenders (and as amended, modified or replaced from time to time).

“Solvent” means, with respect to any Person at any time, that (a) the present fair saleable value of the Property of such Person is greater than the total amount of liabilities (including contingent liabilities) of such Person, (b) the present fair saleable value of the Property of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person has not incurred and does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, (d) such Person would not be unable to obtain a letter from its auditors that did not contain a going concern qualification and (e) such

Person is able to pay its debts as they become due in the normal course of business.

“Specified Financial Covenants” has the meaning set forth in **Section 10.03(a)**.

“Subordinated Debt Cure Right” has the meaning set forth in **Section 10.03(a)**.

“Subsidiary” means, with respect to any Person (the ***“parent”***) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary Guarantors” means each of the Subsidiaries of Borrower identified under the caption “SUBSIDIARY GUARANTORS” on the signature pages hereto and each Subsidiary of Borrower that becomes, or is required to become, a “Subsidiary Guarantor” after the date hereof pursuant to **Section 8.12(a) or (b)**.

“Substitute Lender” has the meaning set forth in **Section 2.07(a)**.

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

“Technical Information” means all trade secrets and other proprietary or confidential information, public information, non-proprietary know-how, any information of a scientific, technical, or business nature in any form or medium, standards and specifications, conceptions, ideas, innovations, discoveries, Invention disclosures, all documented research, developmental, demonstration or engineering work and all other information, data, plans, specifications, reports, summaries, experimental data, manuals, models, samples, know-how, technical information, systems, methodologies, computer programs, information technology and any other information.

“Trademarks” means all trade names, trademarks and service marks, logos, trademark and service mark registrations, and applications for trademark and service mark registrations, including all renewals of trademark and service mark registrations, all rights to recover for all past, present and future infringements thereof and all rights to sue therefor, and all rights corresponding thereto throughout the world, together, in each case, with the product lines and goodwill of the business connected with the use thereof.

“Transactions” means the execution, delivery and performance by each Obligor of this Agreement, the other Loan Documents and the CPS Documents to which such Obligor is intended to be a party and the consummation of the Borrowings and the use of the proceeds of the Loans.

“**U.S. Person**” means a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“**U.S. Tax Compliance Certificate**” has the meaning set forth in **Section 5.03(e)(ii)(B)(3)**.

1.02 Accounting Terms and Principles. All accounting determinations required to be made pursuant hereto shall, unless expressly otherwise provided herein, be made in accordance with GAAP. All components of financial calculations made to determine compliance with this Agreement, including **Section 10**, shall be adjusted to include or exclude, as the case may be, without duplication, such components of such calculations attributable to any Acquisition consummated after the first day of the applicable period of determination and prior to the end of such period, as determined in good faith by Borrower based on assumptions expressed therein and that were reasonable based on the information available to Borrower at the time of preparation of the Compliance Certificate setting forth such calculations.

1.03 Interpretation. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, (a) the terms defined in this Agreement include the plural as well as the singular and vice versa; (b) words importing gender include all genders; (c) any reference to a Section, Annex, Schedule or Exhibit refers to a Section of, or Annex, Schedule or Exhibit to, this Agreement; (d) any reference to “this Agreement” refers to this Agreement, including all Annexes, Schedules and Exhibits hereto, and the words herein, hereof, hereto and hereunder and words of similar import refer to this Agreement and its Annexes, Schedules and Exhibits as a whole and not to any particular Section, Annex, Schedule, Exhibit or any other subdivision; (e) references to days, months and years refer to calendar days, months and years, respectively; (f) all references herein to “include” or “including” shall be deemed to be followed by the words “without limitation”; (g) the word “from” when used in connection with a period of time means “from and including” and the word “until” means “to but not including”; and (h) accounting terms not specifically defined herein shall be construed in accordance with GAAP (except for the term “property”, which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and permits and any right or interest in any property, except where otherwise noted). Unless otherwise expressly provided herein, references to organizational documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all permitted subsequent amendments, restatements, extensions, supplements and other modifications thereto.

1.04 Changes to GAAP. If, after the date hereof, any change occurs in GAAP or in the application thereof and such change would cause any amount required to be determined for the purposes of the covenants to be maintained or calculated pursuant to **Section 8, 9 or 10** to be materially different than the amount that would be determined prior to such change, then:

(a) Borrower will provide a detailed notice of such change (an “**Accounting Change Notice**”) to the Lenders within 30 days of such change;

(b) either Borrower or the Majority Lenders may indicate within 90 days following the date of the Accounting Change Notice that they wish to revise the method of calculating such

financial covenants or amend any such amount, in which case the parties will in good faith attempt to agree upon a revised method for calculating the financial covenants;

(c) until Borrower and the Majority Lenders have reached agreement on such revisions, (i) such financial covenants or amounts will be determined without giving effect to such change and (ii) all financial statements, Compliance Certificates and similar documents provided hereunder shall be provided together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in GAAP;

(d) if no party elects to revise the method of calculating the financial covenants or amounts, then the financial covenants or amounts will not be revised and will be determined in accordance with GAAP without giving effect to such change; and

(e) any Event of Default arising as a result of such change which is cured by operation of this **Section 1.04** shall be deemed to be of no effect *ab initio*.

SECTION 2 THE COMMITMENT

2.01 Commitments. Each Lender agrees severally, on and subject to the terms and conditions of this Agreement (including **Section 6**), to make up to three term loans (provided that PIK Loans shall be deemed not to constitute “term loans” for purposes of this **Section 2.01**) to Borrower, each on a Business Day during the Commitment Period in Dollars in an aggregate principal amount for such Lender not to exceed such Lender’s Commitment; *provided, however*, that at no time shall any Lender be obligated to make a Loan in excess of such Lender’s Proportionate Share of the amount by which the then effective Commitments exceeds the aggregate principal amount of Loans outstanding at such time. Amounts of Loans repaid may not be reborrowed.

2.02 Borrowing Procedures. Subject to the terms and conditions of this Agreement (including **Section 6**), each Borrowing (other than a Borrowing of PIK Loans) shall be made on written notice in the form of **Exhibit B** given by Borrower to the Lenders not later than 11:00 a.m. (Central time) on the Borrowing Notice Date (a “*Notice of Borrowing*”).

2.03 Fees.

(a) **Financing Fee.** On each Borrowing Date, Borrower shall pay to each Lender, out of the proceeds of the Loan advanced by such Lender on such Borrowing Date, a financing fee in an amount equal to 1.75% of the Loan advanced by such Lender on such Borrowing Date.

2.04 Notes. If requested by any Lender, the Loans of such Lender shall be evidenced by one or more promissory notes (each a “*Note*”). Borrower shall prepare, execute and deliver to the Lenders such promissory note(s) payable to the Lenders (or, if requested by the Lenders, to the Lenders and their registered assigns) and in the form attached hereto as **Exhibit C-1**. Thereafter, the Loans of such Lender, and interest thereon, shall at all times (including after assignment pursuant to **Section 12.05**) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

2.05 Use of Proceeds. Borrower shall use the proceeds of the Loans for general working capital purposes and corporate purposes and to pay fees, costs and expenses incurred in connection with the Transactions.

2.06 Defaulting Lenders.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(b) **Waivers and Amendments.** Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in **Section 12.04**.

(c) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by the Lenders for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 11** or otherwise), shall be applied at such time or times as follows: first, as Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement; second, if so determined by the Majority Lenders and Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of such Defaulting Lender to fund Loans under this Agreement; third, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fourth, so long as no Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and fifth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (A) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share and (B) such Loans were made at a time when the conditions set forth in **Section 6** were satisfied or waived, such payment shall be applied solely to pay the Loans of all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender pursuant to this **Section 2.06(c)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) **Defaulting Lender Cure.** If Borrower and the Majority Lenders agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as necessary to cause the Loans to be held on a *pro rata* basis by the Lenders in accordance with their Proportionate Share, whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will

constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.07 Substitution of Lenders.

(a) **Substitution Right.** If any Lender (an "***Affected Lender***"), (i) becomes a Defaulting Lender or (ii) does not consent to any amendment, waiver or consent to any Loan Document for which the consent of the Majority Lenders is obtained but that requires the consent of other Lenders (a "***Non-Consenting Lender***"), then (x) Borrower may elect to pay in full such Affected Lender with respect to all Obligations due to such Affected Lender or (y) either Borrower or the Majority Lenders shall identify any willing Lender or Affiliate of any Lender or Eligible Transferee (in each case, a "***Substitute Lender***") to substitute for such Affected Lender; *provided that* any substitution of a Non-Consenting Lender shall occur only with the consent of Majority Lenders and the Borrower.

(b) **Procedure.** To substitute such Affected Lender or pay in full all Obligations owed to such Affected Lender, Borrower shall deliver a notice to such Affected Lender. The effectiveness of such payment or substitution shall be subject to the delivery by Borrower (or, as may be applicable in the case of a substitution, by the Substitute Lender) of (i) payment for the account of such Affected Lender, of, to the extent accrued through, and outstanding on, the effective date for such payment or substitution, all Obligations owing to such Affected Lender (which for the avoidance of doubt, shall not include any Prepayment Premium) and (ii) in the case of a substitution, an Assignment and Acceptance executed by the Substitute Lender, which shall thereunder, among other things, agree to be bound by the terms of the Loan Documents.

(c) **Effectiveness.** Upon satisfaction of the conditions set forth in **Section 2.07(a)** and **(b)**, the Control Agent shall record such substitution or payment in the Register, whereupon (i) in the case of any payment in full of an Affected Lender, such Affected Lender's Commitments shall be terminated and (ii) in the case of any substitution of an Affected Lender, (A) such Affected Lender shall sell and be relieved of, and the Substitute Lender shall purchase and assume, all rights and claims of such Affected Lender under the Loan Documents, except that the Affected Lender shall retain such rights under the Loan Documents that expressly provide that they survive the repayment of the Obligations and the termination of the Commitments, (B) such Affected Lender shall no longer constitute a "Lender" hereunder and such Substitute Lender shall become a "Lender" hereunder and (C) such Affected Lender shall execute and deliver an Assignment and Acceptance to evidence such substitution; *provided, however,* that the failure of any Affected Lender to execute any such Assignment and Acceptance shall not render such sale and purchase (or the corresponding assignment) invalid.

SECTION 3 PAYMENTS OF PRINCIPAL AND INTEREST

3.01 Repayment.

(a) **Repayment.** During the Interest-Only Period, no payments of principal of the Loans shall be due. Borrower agrees to repay to the Lenders the outstanding principal amount of the Loans, on each Payment Date occurring after the Interest-Only Period, in equal installments.

The amounts of such installments shall be calculated by dividing (i) the sum of the aggregate principal amount of the Loans outstanding on the first day following the end of the Interest-Only Period, by (b) the number of Payment Dates remaining prior to, and including, the Maturity Date.

(b) **Application.** Any optional or mandatory prepayment of the Loans shall be applied to the installments thereof under **Section 3.01(a)** in the inverse order of maturity. To the extent not previously paid, the principal amount of the Loans, together with all other outstanding Obligations, shall be due and payable on the Maturity Date.

3.02 Interest.

(a) **Interest Generally.** Subject to **Section 3.02(d)**, Borrower agrees to pay to the Lenders interest on the unpaid principal amount of the Loans and the amount of all other outstanding Obligations, in the case of the Loans, for the period from the applicable Borrowing Date, and in the case of any other Obligation, from the date such other Obligation is due and payable, in each case, until paid in full, at a rate equal to (i) while the CPS remains outstanding, 13.50% *per annum* plus such rate as would result in the Lenders, in the aggregate, having received an additional *per annum* amount of interest equal to \$100,000, and (ii) while no CPS are outstanding, 13.50% *per annum*.

(b) **Default Interest.** Notwithstanding the foregoing, upon the occurrence and during the continuance of any Event of Default, the interest payable pursuant to **Section 3.02(a)** shall increase automatically by 4.00% *per annum* (such aggregate increased rate, the “**Default Rate**”). Notwithstanding any other provision herein (including **Section 3.02(d)**), if interest is required to be paid at the Default Rate, it shall be paid entirely in cash. If any Obligation is not paid when due under the applicable Loan Document, the amount thereof shall accrue interest at a rate equal to 4.00% *per annum* (without duplication of interest payable at the Default Rate).

(c) **Interest Payment Dates.** Subject to **Section 3.02(d)**, accrued interest on the Loans shall be payable in arrears on the last day of each Interest Period in cash, and upon the payment or prepayment of the Loans (on the principal amount being so paid or prepaid).

(d) **Non-Cash Interest.** Notwithstanding **Section 3.01(a)**, at any time during the PIK Period, Borrower may elect to pay the interest on the outstanding principal amount of the Loans payable pursuant to **Section 3.02(a)** as follows:

(i) 4.50% of such interest

(A) as compounded interest, added to the aggregate principal amount of the Loans (the amount of any such compounded interest being a “**PIK Loan**”), or

(B) paid in the form of common shares of Borrower that are registered and available for immediate resale on the exchange on which the Qualifying IPO has been consummated (such shares being “**PIK Shares**”); *provided that* the option in this **Section 3.02(d)(ii)(B)** shall be available to Borrower solely following consummation of a Qualifying IPO. For purposes of determining the amount of PIK Shares that are required to satisfy a non-cash interest payment obligation elected by Borrower, Borrower’s common

shares shall be valued at the ten trading day average closing share price on the applicable public exchange as of the applicable Payment Date.

(ii) 9.00% (or such other rate as may be required to result in the aggregate percentage interest received pursuant to **Section 3.02(d)(i)** and this **Section 3.02(d)(ii)** complying with the requirements of **Section 3.02(a)(i)**) of such interest in cash and

At the request of the Lenders, each PIK Loan may be evidenced by a Note in the form of **Exhibit C-2**. The principal amount of each PIK Loan shall accrue interest in accordance with the provisions of this Agreement applicable to the Loans.

3.03 Prepayments.

(a) **Optional Prepayments.** Borrower shall have the right to optionally prepay in whole or in part the outstanding principal amount of the Loans in whole or in part on any Payment Date (a “**Redemption Date**”) for an amount equal to the aggregate principal amount of the Loans being prepaid plus the Prepayment Premium plus any accrued but unpaid interest and any fees then due and owing (such aggregate amount, the “**Redemption Price**”). The applicable “**Prepayment Premium**” shall be an amount calculated pursuant to **Section 3.03(a)(i)**.

(i) If the Redemption Date occurs:

(A) on or prior to the eighth Payment Date, the Prepayment Premium shall be an amount equal to 32.00% of the aggregate outstanding principal amount of the Loans outstanding on such Redemption Date (prior to giving effect to such redemption);

(B) after the eighth Payment Date, and on or prior to the twelfth Payment Date, the Prepayment Premium shall be an amount equal to 22.00% of the aggregate outstanding principal amount of the Loans outstanding on such Redemption Date (prior to giving effect to such redemption);

(C) after the twelfth Payment Date, and on or prior to the sixteenth Payment Date, the Prepayment Premium shall be an amount equal to 10.00% of the aggregate outstanding principal amount of the Loans outstanding on such Redemption Date (prior to giving effect to such redemption);

(D) after the sixteenth Payment Date, and on or prior to the twentieth Payment Date, the Prepayment Premium shall be an amount equal to 4.00% of the aggregate outstanding principal amount of the Loans outstanding on such Redemption Date (prior to giving effect to such redemption);

(E) after the twentieth Payment Date, the Prepayment Premium shall be an amount equal to 1.00% of the aggregate outstanding principal amount of the Loans outstanding on such Redemption Date (prior to giving effect to such redemption).

(ii) To determine the aggregate outstanding principal amount of the Loans, and how many Payment Dates have occurred, as of any Redemption Date for purposes of **Section 3.03(a)**:

(A) if, as of such Redemption Date, the Borrower shall have made only one Borrowing, the number of Payment Dates shall be deemed to be the number of Payment Dates that shall have occurred following the first Borrowing Date;

(B) if, as of such Redemption Date, the Borrower shall have made more than one Borrowing, then the Redemption Price shall equal the sum of multiple Redemption Prices calculated with respect to the Loans of each Borrowing, each of which Redemption Prices shall be calculated based on solely the aggregate outstanding principal amount of the Loans borrowed in such Borrowing (and PIK Loans subsequently borrowed in respect of interest payments thereon), as though the applicable number of Payment Dates equals the number of Payment Dates that shall have occurred following the applicable Borrowing Date. In the case of any partial prepayment, the amount of such prepayment shall be allocated to Loans made in the various Borrowings (and PIK Loans in respect thereof) in the order in which such Borrowings were made;

(iii) No partial prepayment shall be made under this **Section 3.03(a)** in connection with any event described in **Section 3.03(b)**.

(b) **Mandatory Prepayments.**

(i) **Asset Sales.** Borrower shall provide to the Lenders 10 days' prior written notice of any Asset Sale not permitted under **Section 9.09**. If, within such notice period, Majority Lenders advise Borrower that a prepayment is required pursuant to this **Section 3.03(b)(i)**, Borrower shall prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Asset Sale in accordance with **Section 3.03(a)** and all other Obligations then outstanding, credited in the following order:

(A) first, in reduction of Borrower's obligation to pay any unpaid interest and any fees then due and owing;

(B) second, in reduction of Borrower's obligation to pay any Claims or Losses referred to in **Section 12.03** then due and owing;

(C) third, in reduction of Borrower's obligation to pay any amounts due and owing on account of the unpaid principal amount of the Loans;

(D) fourth, in reduction of any other Obligation then due and owing; and

(E) fifth, to Borrower or such other Persons as may lawfully be entitled to or directed by Borrower to receive the remainder.

(ii) **Change of Control.** Borrower shall immediately provide to the Lenders notice of any Change of Control. If, within 10 days of receipt of such notice Majority Lenders

notify Borrower in writing that a prepayment is required pursuant to this **Section 3.03(b)(ii)**, Borrower shall prepay the aggregate outstanding principal amount of the Loans in an amount equal to the Redemption Price applicable on the date of such Change of Control in accordance with **Section 3.03(a)** and all other Obligations then outstanding.

(c) The Lenders and Obligors agree that, in the context of the commercial agreements reached between them in this Agreement, the other Loan Documents and the CPS Documents, the calculation of the Prepayment Premium in accordance with **Section 3.03(a)(i)** is intended to and does reflect the reasonably predictable financial impact on the Lenders of any unilateral exercise by the Borrower of its right to prepay all or part of the Loans in advance of the agreed Maturity Date or of each other circumstance under this Agreement that activates this Agreement's requirement that the Borrower pay the Prepayment Premium.

SECTION 4 PAYMENTS, ETC.

4.01 Payments.

(a) **Payments Generally.** (i) Each payment of principal, interest and other amounts to be made by the Obligors under this Agreement or any other Loan Document shall be made in Dollars, in immediately available funds, without deduction, set off or counterclaim, to an account to be designated by the Majority Lenders by notice to Borrower, not later than 4:00 p.m. (Central time) on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day).

(b) **Payment in Dollars Is of the Essence.** The payment obligations of each Obligor under any Loan Document shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to Dollars and transfer to the Lenders under normal banking procedures (after premium and costs of exchange) does not yield the amount of Dollars due under such Loan Document. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder in Dollars into another currency (the "**Other Currency**"), the rate of exchange used shall be that at which in accordance with normal banking procedures the Lenders could purchase Dollars with the Other Currency on business day preceding that on which final judgment is given. The obligation of each Obligor in respect of any such sum due from it to the Lenders under such Loan Document shall, notwithstanding any judgment in such Other Currency, be discharged only to the extent that on the business day following receipt by the Lenders of any sum adjudged to be so due in the Other Currency, the Lenders may in accordance with normal banking procedures purchase Dollars with the Other Currency; if the Dollars so purchased are less than the sum originally due to the Lenders in Dollars, each Obligor agrees, as a separate and independent obligation and notwithstanding any such judgment, to indemnify the Lenders against such loss, and if the Dollars so purchased exceed the sum originally due to the Lenders in Dollars, the Lenders agree to remit to each Obligor such excess.

(c) **Application of Payments.** Each Obligor shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Lenders the amounts payable by such Obligor hereunder to which such payment is to be applied (and in the event that

Obligors fail to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in the manner they determine to be appropriate).

(d) **Non-Business Days.** If the due date of any payment under this Agreement (other than of principal of or interest on the Loans) would otherwise fall on a day that is not a Business Day, such date shall be extended to the next succeeding Business Day.

4.02 Computations. All computations of interest and fees hereunder shall be computed on the basis of a year of 360 days and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

4.03 Notices. Each notice of optional prepayment shall be effective only if received by the Lenders not later than 4:00 p.m. (Central time) on the date one Business Day prior to the date of prepayment. Each notice of optional prepayment shall specify the amount to be prepaid and the date of prepayment.

4.04 Set-Off.

(a) **Set-Off Generally.** Upon the occurrence and during the continuance of any Event of Default, the Lenders and each of their Affiliates are hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Lenders or such Affiliates to or for the credit or the account of Borrower against any and all of the Obligations, whether or not the Lenders shall have made any demand and although such obligations may be unmatured. The Lenders agree promptly to notify Borrower after any such set-off and application, provided that the failure to give such notice shall not affect the validity of such set-off and application. The rights of the Lenders and their Affiliates under this **Section 4.04** are in addition to other rights and remedies (including other rights of set-off) that the Lenders and their Affiliates may have.

(b) **Exercise of Rights Not Required.** Nothing contained herein shall require the Lenders to exercise any such right or shall affect the right of the Lenders to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of Borrower.

SECTION 5 YIELD PROTECTION, ETC.

5.01 Additional Costs.

(a) **Change in Requirements of Law Generally.** If, on or after the date hereof, the adoption of any Requirement of Law, or any change in any Requirement of Law, or any change in the interpretation or administration thereof by any court or other Governmental Authority charged with the interpretation or administration thereof, or compliance by any of the Lenders (or its lending office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, shall impose, modify or deem applicable any reserve (including any such requirement imposed by the Board of Governors of the Federal Reserve System), special deposit, contribution, insurance assessment or similar requirement, in each case

that becomes effective after the date hereof, against assets of, deposits with or for the account of, or credit extended by, a Lender (or its lending office) or shall impose on a Lender (or its lending office) any other condition affecting the Loans or the Commitment, and the result of any of the foregoing is to increase the cost to such Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or any other Loan Document, by an amount deemed by such Lender to be material (other than (i) Indemnified Taxes and (ii) Taxes described in **clause (c) or (d)** of the definition of “Excluded Taxes”), then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender for such increased cost or reduction.

(b) **Change in Capital Requirements.** If a Lender shall have determined that, on or after the date hereof, the adoption of any Requirement of Law regarding capital adequacy, or any change therein, or any change in the interpretation or administration thereof by any Governmental Authority charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, in each case that becomes effective after the date hereof, has or would have the effect of reducing the rate of return on capital of a Lender (or its parent) as a consequence of a Lender’s obligations hereunder or the Loans to a level below that which a Lender (or its parent) could have achieved but for such adoption, change, request or directive by an amount reasonably deemed by it to be material, then Borrower shall pay to such Lender on demand such additional amount or amounts as will compensate such Lender (or its parent) for such reduction.

(c) **Notification by Lender.** The Lenders will promptly notify Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle a Lender to compensation pursuant to this **Section 5.01**. Before giving any such notice pursuant to this **Section 5.01(c)** such Lender shall designate a different lending office if such designation (x) will, in the reasonable judgment of such Lender, avoid the need for, or reduce the amount of, such compensation and (y) will not, in the reasonable judgment of such Lender, be materially disadvantageous to such Lender. A certificate of the Lender claiming compensation under this **Section 5.01**, setting forth the additional amount or amounts to be paid to it hereunder, shall be conclusive and binding on Borrower in the absence of manifest error.

(d) Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to constitute a change in Requirements of Law for all purposes of this **Section 5.01**, regardless of the date enacted, adopted or issued.

5.02 Illegality. Notwithstanding any other provision of this Agreement, in the event that on or after the date hereof the adoption of or any change in any Requirement of Law or in the interpretation or application thereof by any competent Governmental Authority shall make it unlawful for a Lender or its lending office to make or maintain the Loans (and, in the opinion of such Lender, the designation of a different lending office would either not avoid such unlawfulness or would be disadvantageous to such Lender), then such Lender shall promptly

notify Borrower thereof following which (a) the Lender's Commitment shall be suspended until such time as such Lender may again make and maintain the Loans hereunder and (b) if such Requirement of Law shall so mandate, the Loans shall be prepaid by Borrower on or before such date as shall be mandated by such Requirement of Law in an amount equal to the Redemption Price applicable on the date of such prepayment in accordance with **Section 3.03(a)**.

5.03 Taxes.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any Obligation shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by an Obligor, then such Obligor shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by such Obligor shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this **Section 5**) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) **Payment of Other Taxes by Borrower.** Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of each Lender, timely reimburse it for, Other Taxes.

(c) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority pursuant to this **Section 5**, Borrower shall deliver to each Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment.

(d) **Indemnification.** Borrower shall reimburse and indemnify each Recipient, within 10 days after written notice, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender shall be conclusive absent manifest error. Following any such reimbursement, Borrower may contest such Indemnified Taxes with the appropriate authority.

(e) **Status of Lenders.**

Any Lender that is entitled to an exemption from, or reduction of withholding Tax with respect to payments made under any Loan Document shall timely deliver to Borrower such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding; provided that, other than in the case of U.S. Federal withholding Taxes, such Lender has received written notice from Borrower advising it of the availability of such exemption or reduction and containing all applicable documentation. In addition, any Lender shall deliver

such other documentation prescribed by applicable law as reasonably requested by Borrower as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in **Section 5.03(e)(ii)(A), (B), (C) or (D)**) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(f) **Treatment of Certain Refunds.** If any party has received a refund of any Taxes as to which it has been indemnified pursuant to this **Section 5** (including by the payment of additional amounts pursuant to this **Section 5**), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this **Section 5** with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this **Section 5.03(f)**, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this **Section 5.03(f)** the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This **Section 5.03(f)** shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(g) **Mitigation Obligations.** If Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or to any Governmental Authority for the account of any Lender pursuant to **Section 5.01** or this **Section 5.03**, then such Lender shall (at the request of Borrower) use commercially reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign and delegate its rights and obligations hereunder to another of its offices, branches or Affiliates if, in the sole reasonable judgment of such Lender, such designation or assignment and delegation would (i) eliminate or reduce amounts payable pursuant to **Section 5.01** or this **Section 5.03**, as the case may be, in the future, (ii) not subject such Lender to any unreimbursed cost or expense and (iii) not otherwise be disadvantageous to such Lender. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment and delegation.

(h) **Approved Issuer Levy.**

(i) The Borrower will (A) register as an "approved issuer" (as defined in section YA 1 of the Income Tax Act 2007 of New Zealand); (B) ensure that this Agreement is registered with the New Zealand Commissioner of Inland Revenue under section 86H of the Stamp and Cheque Duties Act 1971 of New Zealand; and (C) in respect of each payment of interest (or payment deemed by law to be interest) under the Loan Documents to a Lender that is

a not resident in New Zealand for tax purposes and which is not engaged in business through a fixed establishment in New Zealand, make the relevant payment of “approved issuer levy” (as defined in section 86F of the first mentioned Act) in accordance with section 86K of that Act in order to reduce (to the extent permitted by law) the applicable level of non-resident withholding tax to zero percent.

(ii) The Borrower may not deduct any amount of approved issuer levy from a payment of interest to a Lender.

(iii) The Borrower shall promptly notify the Lenders in writing upon becoming aware that it no longer has “approved issuer” status.

(iv) In the event that New Zealand non-resident withholding tax is not reduced to zero percent, the amount of the payment due from the Borrower shall be increased to an amount which (after any withholding tax deduction) leaves an amount equal to the payment which would have been due if no non-resident withholding tax deduction had been required in accordance with the applicable provisions of this **Section 5.03**.

SECTION 6 CONDITIONS PRECEDENT

6.01 Conditions to the First Borrowing. The obligation of each Lender to make a Loan as part of the first Borrowing shall not become effective until the following conditions precedent shall have been satisfied or waived in writing by the Majority Lenders and, in the case of the condition precedent in **Section 6.01(f)(x)** only, Borrower:

(a) **Borrowing Date.** Such Borrowing shall be made within thirteen (13) Business Days of the date hereof.

(b) **Amount of First Borrowing.** The amount of such Borrowing shall equal \$10,000,000.

(c) **No Law Restraining Transactions.** No applicable law or regulation shall restrain or prevent the Transactions.

(d) **Payment of Fees.** Lenders shall be satisfied with the arrangements to deduct the fees set forth herein (including without limitation the financing fee required pursuant to **Section 2.03**) from the proceeds advanced.

(e) **Lien Searches.** Lenders shall be satisfied with Lien searches regarding Borrower and its Subsidiaries made within two Business Days prior to such Borrowing.

(f) **Documentary Deliveries.** The Lenders shall have received the following documents, each of which shall be in form and substance satisfactory to the Lenders:

(i) **Agreement.** This Agreement duly executed and delivered by Borrower and each of the other parties hereto.

(ii) **Security Documents.**

(A) The Security Agreement described in **clause (i)** of the definition thereof, duly executed and delivered by Borrower and AFT Orphan;

(B) Evidence of filing of (1) UCC-1 financing statements against each Obligor in the District of Columbia and (2) financing statements against AFT and AFT Orphan in the New Zealand Personal Property Securities Register;

(C) Original share certificates or other documents or evidence of title with regard to all Equity Interests owned by the Obligors (to the extent that such Equity Interests are certificated), together with share transfer documents, executed in blank;

(D) Short-Form IP Security Agreements or such other Intellectual Property security agreements, in each case duly executed and delivered by Borrower, as may be (if at all) necessary or advisable to perfect a lien in, or provide protection against the rights of third party purchasers of, Intellectual Property registered in Australia; and

(E) All other documents and instruments reasonably required to perfect the Lenders' Lien on, and security interest in, the Collateral (including without limitation any capital stock certificates and undated stock powers executed in blank) shall have been duly executed (if applicable) and delivered and be in proper form for filing, and shall create in favor of the Lenders, a perfected Lien on, and security interest in, the Collateral, subject to no Liens other than Permitted Liens.

(iii) **Notes.** Any Notes requested in accordance with **Section 2.04**.

(iv) **Approvals.** Certified copies of all material licenses, consents, authorizations and approvals of, and notices to and filings and registrations with, any Governmental Authority (including all foreign exchange approvals), and of all third-party consents and approvals, necessary in connection with the making and performance by the Obligors of the Loan Documents and the Transactions.

(v) **Corporate Documents.** Certified copies of the constitutive documents of each Obligor (if publicly available in such Obligor's jurisdiction of formation) and of resolutions of the Board of Directors (or shareholders, if applicable) of each Obligor authorizing the making and performance by it of the Loan Documents to which it is a party.

(vi) **Incumbency Certificate.** A certificate of each Obligor as to the authority, incumbency and specimen signatures of the persons who have executed the Loan Documents and any other documents in connection herewith on behalf of the Obligors and as to such Obligor's authorizing the making and performance by it of the Loan Documents to which it is a party.

(vii) **Officer's Certificate.** A certificate, dated the date of such Borrowing and signed by the President, a Vice President or a financial officer of Borrower, confirming compliance with the conditions set forth in **Section 6.03**.

(viii) **Opinions of Counsel.**

(A) An opinion, dated the date of such Borrowing, of counsel to Borrower and AFT Orphan, under the law of New York, in form acceptable to the Lenders and their counsel.

(B) An opinion, dated the date of such Borrowing, of counsel to Lenders, under the law of New Zealand, in form acceptable to the Lenders.

(ix) **Insurance.** Certificates of insurance evidencing the existence of all insurance required to be maintained by Borrower pursuant to **Section 8.05(b)** and the designation of the Lenders as the loss payees or additional named insured, as the case may be, thereunder.

(x) **Intercreditor Agreement.** Borrower, AFT AUS, Lenders, Bank of New Zealand and (if applicable) National Australia Bank Limited shall have executed and delivered an agreement between them recording the priority of securities which secure the indebtedness of Borrower, AFT AUS and other Subsidiaries of Borrower to Lenders, Bank of New Zealand and (if applicable) National Australia Bank Limited respectively and regulating (among other things) the implementation and conduct of relevant security enforcement rights, which agreement shall be in a form acceptable to Borrower and Lenders.

(xi) **CPS Documents.** Evidence that each of the CPS Documents has been duly adopted or executed and delivered (as applicable).

6.02 Conditions to Subsequent Borrowings. The obligation of each Lender to make a Loan as part of a subsequent Borrowing is subject to the following conditions precedent:

(a) **Borrowing Date.** Such Borrowing shall occur on or prior to (i) in the case of the second Borrowing, April 30, 2015, and (ii) in the case of the third Borrowing (if any), October 30, 2016. For purposes of clarification, the third Borrowing may or may not be made, at Borrower's sole option.

(b) **Amount of Borrowing.** The amount of such Borrowing shall equal (i) in the case of the second Borrowing, \$5,000,000, and (ii) in the case of the third Borrowing (if any), up to \$15,000,000.

(c) **Third Borrowing Milestone.** In the case of the third Borrowing (if any), Borrower shall have achieved, during the fiscal quarter most recently completed prior to the date of such Borrowing, Revenue of at least NZ\$25,000,000.

(d) **Notice of Milestone Achievement and Audit.** Borrower shall have delivered to the Lenders a notice certifying satisfaction of the condition set forth in **Section 6.02(c)** no later than 30 days thereafter, and the Lenders shall have been reasonably satisfied with the results of its audit of Borrower's Revenue by examining Borrower's books and records.

(e) **Notice of Borrowing.** A Notice of Borrowing shall have been received no later than 60 calendar days after satisfaction of the condition set forth in **Section 6.02(c)**.

(f) **Financing Fee.** Except in the case of any PIK Loan, each Lender shall have received its portion of the fees payable pursuant to **Section 2.03(a)**.

6.03 Conditions to Each Borrowing. The obligation of each Lender to make a Loan as part of any Borrowing (including the first Borrowing) is also subject to satisfaction of the following further conditions precedent on the applicable Borrowing Date:

(a) **Commitment Period.** Such Borrowing Date shall occur during the Commitment Period.

(b) **No Default; Representations and Warranties.** Both immediately prior to the making of such Loan and after giving effect thereto and to the intended use thereof:

(i) no Default shall have occurred and be continuing; and

(ii) the representations and warranties made by Borrower in **Section 7** shall be true on and as of the Borrowing Date, and immediately after giving effect to the application of the proceeds of the Borrowing, with the same force and effect as if made on and as of such date (except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date).

(c) **Notice of Borrowing.** Except in the case of any PIK Loan, Capital Royalty Partners II L.P. shall have received a Notice of Borrowing as and when required pursuant to **Section 2.02**.

Each Borrowing shall constitute a certification by Borrower to the effect that the conditions set forth in this **Section 6.03** have been fulfilled as of the applicable Borrowing Date.

SECTION 7 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to the Lenders that:

7.01 Power and Authority. Each of Borrower and its Subsidiaries (a) is a duly organized and validly existing under the laws of its jurisdiction of organization, (b) has all requisite corporate or other power, and has all material governmental licenses, authorizations, consents and approvals necessary to own its assets and carry on its business as now being or as proposed to be conducted except to the extent that failure to have the same could not reasonably be expected to have a Material Adverse Effect, (c) is qualified to do business and is in good standing in all jurisdictions in which it does business, and (d) has full power, authority and legal right to make and perform each of the Loan Documents to which it is a party and, in the case of Borrower, to borrow the Loans hereunder.

7.02 Authorization; Enforceability. The Loans are within each Obligor's corporate powers and have been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Agreement has been duly executed and delivered by each Obligor and constitutes, and each of the other Loan Documents to which it is a party when executed and delivered by such Obligor will constitute, a legal, valid and binding obligation of such Obligor,

enforceable against each Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

7.03 Governmental and Other Approvals; No Conflicts. The Loans (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for (i) such as have been obtained or made and are in full force and effect and (ii) filings and recordings in respect of the Liens created pursuant to the Security Documents, (b) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of Borrower and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon Borrower and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person, and (d) will not result in the creation or imposition of any Lien (other than Permitted Liens) on any asset of Borrower and its Subsidiaries.

7.04 Financial Statements; Material Adverse Change.

(a) **Financial Statements.** Borrower has heretofore furnished to the Lenders certain financial statements as provided for in **Section 8.01**. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of Borrower and its Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements previously-delivered statements of the type described in **Section 8.01(b)**. Neither Borrower nor any of its Subsidiaries has any material contingent liabilities or unusual forward or long-term commitments not disclosed in the aforementioned financial statements.

(b) **No Material Adverse Change.** Since March 31, 2013, there has been no Material Adverse Change.

7.05 Properties.

(a) **Property Generally.** Each Obligor has good and marketable fee simple title to, or valid leasehold interests in, all its real and personal Property material to its business, subject only to Permitted Liens and except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) **Intellectual Property.** The Obligors represent and warrant to the Lenders as of the date hereof as follows, and the Obligors acknowledge that the Lenders are relying on such representations and warranties in entering into this Agreement:

(i) **Schedule 7.05(b)** (as amended from time to time by Borrower in accordance with **Section 7.20**) contains:

(A) a complete and accurate list of all applied for or registered Patents, including the jurisdiction and patent number;

(B) a complete and accurate list of all applied for or registered Trademarks, including the jurisdiction, trademark application or registration number and the application or registration date; and

(C) a complete and accurate list of all applied for or registered Copyrights;

(ii) Each Obligor is the owner or licensee of all right, title and interest in and to, and have the right to use the Obligor Intellectual Property with no breaks in chain of title with good and marketable title, free and clear of any Liens or Claims of any kind whatsoever other than Permitted Liens. Without limiting the foregoing, and except as set forth in **Schedule 7.05(b)** (as amended from time to time by Borrower in accordance with **Section 7.20**):

(A) other than with respect to the Material Agreements, or as permitted by **Section 9.09**, the Obligors have not transferred ownership of Material Intellectual Property, in whole or in part, to any other Person who is not an Obligor;

(B) other than (i) the Material Agreements, (ii) customary restrictions in in-bound licenses of Intellectual Property and non-disclosure agreements, or (iii) as would have been or is permitted by **Section 9.09**, there are no judgments, covenants not to sue, permits, grants, licenses, Liens (other than Permitted Liens), Claims, or other agreements or arrangements relating to Borrower's Material Intellectual Property, including any development, submission, services, research, license or support agreements, which bind, obligate or otherwise restrict the Obligors;

(C) the use of any of the Obligor Intellectual Property, to the best of Borrower's Knowledge, does not breach, violate, infringe or interfere with or constitute a misappropriation of any valid rights arising under any Intellectual Property of any other Person;

(D) there are no pending or, to Borrower's Knowledge, threatened Claims against the Obligors asserted by any other Person relating to the Obligor Intellectual Property, including any Claims of adverse ownership, invalidity, infringement, misappropriation, violation or other opposition to or conflict with such Intellectual Property; the Obligors have not received any written notice from any Person that Borrower's business, the use of the Obligor Intellectual Property, or the manufacture, use or sale of any product or the performance of any service by Borrower infringes upon, violates or constitutes a misappropriation of, or may infringe upon, violate or constitute a misappropriation of, or otherwise interfere with, any other Intellectual Property of any other Person;

(E) the Obligors have no Knowledge that the Obligor Intellectual Property is being infringed, violated, misappropriated or otherwise used by any other Person without the express authorization of the Obligors. Without limiting the foregoing, the Obligors have not put any other Person on notice of actual or potential infringement, violation or misappropriation of any of the Obligor Intellectual Property; the Obligors have

not initiated the enforcement of any Claim with respect to any of the Obligor Intellectual Property;

(F) all relevant current and former employees and contractors of Borrower have executed written confidentiality and invention assignment Contracts with Borrower that irrevocably assign to Borrower or its designee all of their rights to any Inventions relating to Borrower's business;

(G) to the Knowledge of the Obligors, the Obligor Intellectual Property is all the Intellectual Property necessary for the operation of Borrower's business as it is currently conducted or as currently contemplated to be conducted;

(H) the Obligors have taken reasonable precautions to protect the secrecy, confidentiality and value of its Obligor Intellectual Property consisting of trade secrets and confidential information.

(I) each Obligor has delivered to the Lenders accurate and complete copies of all Material Agreements relating to the Obligor Intellectual Property;

(J) there are no pending or, to the Knowledge of any of the Obligors, threatened in writing Claims against the Obligors asserted by any other Person relating to the Material Agreements, including any Claims of breach or default under such Material Agreements;

(iii) With respect to the Obligor Intellectual Property consisting of Patents, except as set forth in **Schedule 7.05(b)** (as amended from time to time by Borrower in accordance with **Section 7.20**), and without limiting the representations and warranties in **Section 7.05(b)(ii)**:

(A) each of the issued claims in such Patents, to Borrower's Knowledge, is valid and enforceable;

(B) the inventors claimed in such Patents have executed written Contracts with Borrower or its predecessor-in-interest that properly and irrevocably assigns to Borrower or predecessor-in-interest all of their rights to any of the Inventions claimed in such Patents to the extent permitted by applicable law;

(C) none of the Patents, or the Inventions claimed in them, have been dedicated to the public except as a result of intentional decisions made by the applicable Obligor;

(D) to Borrower's Knowledge, all prior art material to such Patents was adequately disclosed to or considered by the respective patent offices during prosecution of such Patents to the extent required by applicable law or regulation;

(E) subsequent to the issuance of such Patents, neither Borrower nor any Subsidiary Guarantors or their predecessors in interest, have filed any disclaimer or filed any other voluntary reduction in the scope of the Inventions claimed in such Patents;

(F) no allowable or allowed subject matter of such Patents, to Borrower's Knowledge, is subject to any competing conception claims of allowable or allowed subject matter of any patent applications or patents of any third party and have not been the subject of any interference, re-examination or opposition proceedings, nor are the Obligors aware of any basis for any such interference, re-examination or opposition proceedings;

(G) no such Patents, to Borrower's Knowledge, have ever been finally adjudicated to be invalid, unpatentable or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and, with the exception of publicly available documents in the applicable Patent Office recorded with respect to any Patents, the Obligors have not received any notice asserting that such Patents are invalid, unpatentable or unenforceable; if any of such Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in the Collateral;

(H) the Obligors have not received an opinion, whether preliminary in nature or qualified in any manner, which concludes that a challenge to the validity or enforceability of any of such Patents is more likely than not to succeed;

(I) the Obligors have no Knowledge that they or any prior owner of such Patents or their respective agents or representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate or render unpatentable or unenforceable any such Patents; and

(J) all maintenance fees, annuities, and the like due or payable on the Patents have been timely paid or the failure to so pay was the result of an intentional decision by the applicable Obligor or would not reasonably be expected to result in a Material Adverse Change.

(iv) none of the foregoing representations and statements of fact contains any untrue statement of material fact or omits to state any material fact necessary to make any such statement or representation not misleading to a prospective Lender seeking full information as to the Obligor Intellectual Property and the Borrower's business.

(c) **Material Intellectual Property. Schedule 7.05(c)** (as amended from time to time by Borrower in accordance with **Section 7.20**) contains an accurate list of the Obligor Intellectual Property that is material to Borrower's business with an indication as to whether the applicable Obligor owns or has an exclusive or non-exclusive license to such Obligor Intellectual Property.

7.06 No Actions or Proceedings.

(a) **Litigation.** There is no litigation, investigation or proceeding pending or, to the best of Borrower's Knowledge, threatened with respect to Borrower and its Subsidiaries by or before any Governmental Authority or arbitrator (i) that either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, except as specified in **Schedule**

7.06 (as amended from time to time by Borrower in accordance with **Section 7.20**) or (ii) that involves this Agreement or the Transactions.

(b) **Environmental Matters.** The operations and Property of Borrower and its Subsidiaries comply with all applicable Environmental Laws, except to the extent the failure to so comply (either individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

(c) **Labor Matters.** Borrower has not engaged in unfair labor practices and there are no material labor actions or disputes involving the employees of Borrower.

7.07 Compliance with Laws and Agreements. Each of the Obligor is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

7.08 Taxes. Except as set forth on **Schedule 7.08**, each of the Obligor has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all taxes required to have been paid by it, except taxes that are being contested in good faith by appropriate proceedings and for which such Obligor has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

7.09 Full Disclosure. Borrower has disclosed to the Lenders all Material Agreements to which any Obligor is subject, and all other matters to its Knowledge, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Obligor to the Lenders in connection with the negotiation of this Agreement, the other Loan Documents and the CPS Documents or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any material misstatement of material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided that*, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

7.10 Regulation.

(a) **Investment Company Act.** Neither Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940.

(b) **Margin Stock.** Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of the Loans will be used to buy or carry any Margin Stock in violation of Regulation T, U or X.

7.11 Solvency. Borrower is and, immediately after giving effect to the Borrowing and the use of proceeds thereof will be, Solvent.

7.12 Subsidiaries. Set forth on **Schedule 7.12** is a complete and correct list of all Subsidiaries of the Borrower as of the date hereof. Each such Subsidiary is duly organized and validly existing under the jurisdiction of its organization shown in said **Schedule 7.12**, and the percentage ownership by Borrower of each such Subsidiary is as shown in said **Schedule 7.12**.

7.13 Indebtedness and Liens. Set forth on **Schedule 7.13(a)** is a complete and correct list of all Indebtedness of each Obligor outstanding as of the date hereof. **Schedule 7.13(b)** is a complete and correct list of all Liens granted by Borrower and other Obligors with respect to their respective Property and outstanding as of the date hereof.

7.14 Material Agreements. Set forth on **Schedule 7.14** (as amended from time to time by Borrower in accordance with **Section 7.20**) is a complete and correct list of (i) each Material Agreement and (ii) each agreement creating or evidencing any Material Indebtedness. No Obligor is in material default under any such Material Agreement or agreement creating or evidencing any Material Indebtedness. Except as otherwise disclosed on **Schedule 7.14**, to Borrower's Knowledge, all material vendor purchase agreements and provider contracts of the Obligors are in full force and effect without material modification from the form in which the same were disclosed to the Lenders.

7.15 Restrictive Agreements. None of the Obligors is subject to any indenture, agreement, instrument or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets (other than (x) customary provisions in contracts (including without limitation leases and in-bound licenses of Intellectual Property) restricting the assignment thereof and (y) restrictions or conditions imposed by any agreement governing secured Permitted Indebtedness permitted under **Section 9.01(h)**, to the extent that such restrictions or conditions apply only to the property or assets securing such Indebtedness), or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to Borrower or any other Subsidiary or to Guarantee Indebtedness of Borrower or any other Subsidiary (each, a "**Restrictive Agreement**"), except those listed on **Schedule 7.15** or otherwise permitted under **Section 9.11**.

7.16 Real Property. As of the date hereof, neither Borrower nor any of its Subsidiaries owns any real property. Neither Borrower nor any of its Subsidiaries is in material breach of any lease of any real property.

7.17 Collateral; Security Interest. Each Security Document is effective to create in favor of the Lenders a legal, valid and enforceable security interest in the Collateral subject thereto and each such security interest is perfected to the extent required by (and has the priority required by) the applicable Security Document. The Security Documents collectively are effective to create in favor of the Lenders a legal, valid and enforceable security interest in the Collateral, which security interests are first-priority (subject only to Permitted Priority Liens).

7.18 Regulatory Approvals. Borrower and its Subsidiaries hold, and will continue to hold, either directly or through licensees and agents, all Regulatory Approvals, licenses, permits and similar governmental authorizations of a Governmental Authority necessary or required for Borrower and its Subsidiaries to conduct their operations and business in the manner currently conducted.

7.19 Miscellaneous. (a) Each Obligor is subject to civil and commercial law with respect to its obligations under the Loan Documents, and the execution, delivery and performance by each Obligor of the Loan Documents to which it is a party constitute and will constitute private and commercial acts and not public or governmental acts. Neither any Obligor nor any of its property has any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) under the laws of its jurisdiction of organization in respect of its obligations under the Loan Documents.

(b) Each Loan Document executed by any Obligor is in proper legal form under the laws of such Obligor's jurisdiction of organization for the enforcement thereof against such Obligor under the laws of its jurisdiction of organization. It is not necessary to ensure the legality, validity, enforceability, priority or admissibility in evidence of any Loan Document executed by any Obligor that such Loan Document be filed, registered or recorded with, or executed or notarized before, any court or other authority in its jurisdiction of organization or that any registration charge or stamp or similar tax be paid on or in respect of such Loan Document, except for any such filing, registration or recording, or execution or notarization, as has been made or is not required to be made until such Loan Document or any other document is sought to be enforced and for any charge or tax as has been timely paid.

(c) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any governmental agency or authority in or of any Obligor's jurisdiction of organization either (i) on or by virtue of the execution or delivery of the Loan Documents to which such Obligor is a party or (ii) on any payment to be made by such Obligor pursuant to the Loan Documents.

(d) The execution, delivery and performance of the Loan Documents executed by each Obligor are, under applicable foreign exchange control regulations of such Obligor's jurisdiction of organization, not subject to any notification or authorization except (i) such as have been made or obtained or (ii) such as cannot be made or obtained until a later date. Each Obligor shall make or obtain each notification or authorization described in the foregoing **clause (ii)** as soon as is reasonably practicable.

(e) It is not necessary under the laws of any Obligor's jurisdiction of organization to enable Lenders to enforce their rights under any Loan Document, or by reason of the execution of any Loan Document or the performance by it of its obligations under any Loan Document, that any Lender be licensed, qualified or otherwise entitled to carry on business in any Obligor's jurisdiction of organization.

(f) No Lender is, or will be deemed to be, resident, domiciled or carrying on business in any Obligor's jurisdiction of organization solely by reason of the execution, performance or enforcement of any Loan Document.

(g) The obligations of each Obligor under each of the Loan Documents executed by it will constitute direct, general and unconditional obligations of such Obligor, ranking at least *pari passu* in priority of payment with the highest ranking Indebtedness of such Obligor, with the exception of any indebtedness ranking senior by operation of law (and not by agreement).

7.20 Update of Schedules. Each of **Schedules 7.05(b)** (in respect of the lists of Patents, Trademarks, and Copyrights under **Section 7.05(b)(i)**), **7.05(c)**, **7.06**, **7.14** and **7.16** may be updated by Borrower from time to time in order to insure the continued accuracy of such Schedule as of any upcoming date on which representations and warranties are made incorporating the information contained on such Schedule. Such update may be accomplished by Borrower providing to the Lenders, in writing (including by electronic means), a revised version of such Schedule in accordance with the provisions of **Section 12.02**. Each such updated Schedule shall be effective immediately upon the receipt thereof by the Lenders.

SECTION 8

AFFIRMATIVE COVENANTS

Each Obligor covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations have been paid in full indefeasibly in cash:

8.01 Financial Statements and Other Information. Borrower will furnish to the Lenders:

(a) as soon as available and in any event within 45 days after the end of the first three fiscal quarters of each fiscal year, the consolidated and consolidating balance sheets of the Obligor as of the end of such quarter, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the corresponding period in the preceding fiscal year, together with a certificate of a Responsible Officer of Borrower stating that such financial statements fairly present the financial condition of Borrower and its Subsidiaries as at such date and the results of operations of Borrower and its Subsidiaries for the period ended on such date and have been prepared in accordance with GAAP consistently applied, subject to changes resulting from normal, year-end audit adjustments and except for the absence of notes;

(b) as soon as available and in any event within 120 days after the end of each fiscal year, the consolidated and consolidating balance sheets of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated and consolidating statements of income, shareholders' equity and cash flows of Borrower and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail and setting forth in comparative form the figures for the previous fiscal year, accompanied by a report and opinion thereon of PricewaterhouseCoopers LLP or another firm of independent certified public accountants of recognized national standing acceptable to the Lenders, which report and opinion

shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any “going concern” or like qualification or exception or any qualification or exception as to the scope of such audit, and in the case of such consolidating financial statements, certified by a Responsible Officer of Borrower;

(c) together with the report of Borrower’s independent certified public accountants delivered pursuant to **Section 8.01(b)**, a certificate of such independent public accountants stating that (i) such financial statements fairly present in all material respects the financial position, results of operations and cash flow of Borrower and its Subsidiaries as at the dates indicated and for the periods indicated therein in accordance with GAAP without qualification as to the scope of the audit or as to going concern and without any other similar qualification and (ii) in the course of the regular audit of the businesses of Borrower and its Subsidiaries, which audit was conducted in accordance with the standards of the New Zealand Public Company Accounting Oversight Board (or any successor entity), such accountants have obtained no knowledge that a Default in respect of any financial covenant contained in **Section 10** is continuing or, if in the opinion of such accountants such a Default is continuing, a statement as to the nature thereof;

(d) together with the financial statements required pursuant to **Sections 8.01(a), (b), and (c)**, a compliance certificate of a Responsible Officer as of the end of the applicable accounting period (which delivery may, unless a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes) in the form of **Exhibit E** (a “*Compliance Certificate*”) including details of any issues that are material that are raised by auditors;

(e) together with the financial statements required pursuant to **Sections 8.01(a)**, a report detailing the potential exposure of the Obligors under Hedging Agreements (including without limitation the amounts of all termination payments that would be owing by Obligors if termination events were to occur under the transactions covered thereby);

(f) promptly upon receipt thereof, copies of all letters of representation signed by an Obligor to its auditors and copies of all auditor reports delivered for each fiscal quarter;

(g) as soon as available, a consolidated financial forecast for Borrower and its Subsidiaries for the following five fiscal years, including forecasted consolidated balance sheets, consolidated statements of income, shareholders’ equity and cash flows of Borrower and its Subsidiaries;

(h) promptly after the same are released, copies of all press releases;

(i) promptly, and in any event within five Business Days after receipt thereof by an Obligor thereof, copies of each notice or other correspondence received from any securities regulator or exchange to the authority of which Borrower may become subject from time to time concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of such Obligor;

(j) the information regarding insurance maintained by Borrower and its Subsidiaries as required under **Section 8.05**;

(k) promptly following Lenders' request at any time, proof of Borrower's compliance with **Section 10.01**;

(l) within five (5) days of delivery, copies of all statements, reports and notices (including board kits) made available to holders of Borrower's Equity Interests; *provided that* any such material may be redacted by Borrower to exclude information relating to the Lenders (including Borrower's strategy regarding the Loans); and

(m) if and for so long as an Event of Default has occurred and is continuing and Capital Royalty Partners II L.P. is not otherwise entitled to appoint an individual as a director of Borrower under the Equity Investment Agreement, all information which is made available to other directors of Borrower in that capacity, at the time that information is provided to the other directors.

8.02 Notices of Material Events. Borrower will furnish to the Lenders written notice of the following promptly after a Responsible Officer first learns of the existence of:

- (a) the occurrence of any Default;
- (b) notice of the occurrence of any event with respect to its property or assets resulting in a calculable definitive Loss aggregating \$300,000 (or the Equivalent Amount in other currencies) or more;
- (c) (A) any proposed acquisition of stock, assets or property by any Obligor that would reasonably be expected to result in environmental liability under Environmental Laws, and (B)(1) spillage, leakage, discharge, disposal, leaching, migration or release of any Hazardous Material required to be reported to any Governmental Authority under applicable Environmental Laws, and (2) all actions, suits, claims, notices of violation, hearings, investigations or proceedings pending, or to the best of Borrower's Knowledge, threatened against or affecting Borrower or any of its Subsidiaries or with respect to the ownership, use, maintenance and operation of their respective businesses, operations or properties, relating to Environmental Laws or Hazardous Material;
- (d) the assertion of any environmental matter by any Person against, or with respect to the activities of, Borrower or any of its Subsidiaries and any alleged violation of or non-compliance with any Environmental Laws or any permits, licenses or authorizations which could reasonably be expected to involve damages in excess of \$100,000 other than any environmental matter or alleged violation that, if adversely determined, could not (either individually or in the aggregate) have a Material Adverse Effect;
- (e) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting Borrower or any of its Affiliates that, if adversely determined, could reasonably be expected to result in a Material Adverse Effect;
- (f) (i) the termination of any Material Agreement; (ii) the receipt by Borrower or any of its Subsidiaries of any material adverse notice under any Material Agreement; (iii) the entering into of any new Material Agreement by an Obligor; or (iv) any materially adverse amendment to a Material Agreement;

- (g) the reports and notices as required by the Security Documents;
- (h) within 30 days of the date thereof, or, if earlier, on the date of delivery of any financial statements pursuant to **Section 8.01**, notice of any material change in accounting policies or financial reporting practices by the Obligor;
- (i) promptly after the occurrence thereof, notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving an Obligor;
- (j) a licensing agreement or arrangement entered into by Borrower or any Subsidiary in connection with any infringement or alleged infringement of the Intellectual Property of another Person;
- (k) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect;
- (l) concurrently with the delivery of financial statements under **Section 8.01(b)**, the creation or other acquisition of any Intellectual Property by Borrower or any Subsidiary after the date hereof and during such prior fiscal year which is registered or becomes registered or the subject of an application for registration with the U.S. Copyright Office or the U.S. Patent and Trademark Office, as applicable, or with any other equivalent foreign Governmental Authority;
- (m) any change to the Borrower's and each Subsidiary Guarantor's ownership of Deposit Accounts, Securities Accounts and Commodity Accounts, by delivering to Lenders an updated Annex 7 to the Security Agreement setting forth a complete and correct list of all such accounts as of the date of such change; or
- (n) such other information respecting the operations, properties, business or condition (financial or otherwise) of the Obligor (including with respect to the Collateral) as the Majority Lenders may from time to time reasonably request.

Each notice delivered under this **Section 8.02** shall be accompanied by a statement of a financial officer or other executive officer of Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

8.03 Existence; Conduct of Business. Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; *provided that* the foregoing shall not prohibit any merger, amalgamation, consolidation, liquidation or dissolution permitted under **Section 9.03**.

8.04 Payment of Obligations. Borrower will, and will cause each of its Subsidiaries to, pay and discharge its obligations, including (i) all taxes, fees, assessments and governmental charges or levies imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful claims for labor, materials and supplies which, if unpaid, might become a Lien upon any properties or assets of Borrower or any Subsidiary, except to the extent

such taxes, fees, assessments or governmental charges or levies, or such claims are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP; (ii) all lawful claims which, if unpaid, would by law become a Lien upon its property not constituting a Permitted Lien; and (iii) all Indebtedness other than Permitted Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

8.05 Insurance. Borrower will, and will cause each of its Subsidiaries to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations. Upon the request of Majority Lenders, Borrower shall furnish the Lenders from time to time with full information as to the insurance carried by it and, if so requested, copies of all such insurance policies. Borrower also shall furnish to the Lenders from time to time upon the request of the Majority Lenders a certificate from Borrower's insurance broker or other insurance specialist stating that all premiums then due on the policies relating to insurance on the Collateral have been paid, that such policies are in full force and effect and that such insurance coverage and such policies comply with all the requirements of this **Section 8.05**. Borrower shall use commercially reasonable efforts to ensure, or cause others to ensure, that all insurance policies required under this **Section 8.05** shall provide that they shall not be terminated or cancelled nor shall any such policy be materially changed in a manner adverse to Borrower without at least 30 days' prior written notice to Borrower and the Lenders. Receipt of notice of termination or cancellation of any such insurance policies or reduction of coverages or amounts thereunder shall entitle the Lenders to renew any such policies, cause the coverages and amounts thereof to be maintained at levels required pursuant to the first sentence of this **Section 8.05** or otherwise to obtain similar insurance in place of such policies, in each case at the expense of Borrower.

8.06 Books and Records; Inspection Rights. Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times (but not more often than once per quarter unless an Event of Default has occurred and is continuing). Borrower shall pay all reasonable costs associated with travel, once per fiscal year, by a single representative of all Lenders to Borrower's corporate offices and primary operating facilities.

8.07 Compliance with Laws and Other Obligations. Borrower will, and will cause each of its Subsidiaries to, (i) comply in all material respects with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property (including Environmental Laws) and (ii) comply in all material respects with all terms of Indebtedness and all other Material Agreements, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

8.08 Maintenance of Properties, Etc.

(a) Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve all of its properties necessary or useful in the proper conduct of its business in good working order and condition in accordance with the general practice of other Persons of similar character and size, ordinary wear and tear and damage from casualty or condemnation excepted.

(b) Without limiting the generality of **Section 8.08(a)**, Borrower shall comply with each of the following covenants with respect to the Borrower Lease:

(i) Borrower shall diligently perform and timely observe all of the terms, covenants and conditions of the Borrower Lease on the part of Borrower to be performed and observed prior to the expiration of any applicable grace period therein provided and do everything necessary to preserve and to keep unimpaired and in full force and effect the Borrower Lease.

(ii) Borrower shall promptly notify Lenders of the giving of any written notice by Borrower Landlord to Borrower of any default by Borrower thereunder, and promptly deliver to Lenders a true copy of each such notice. If Borrower shall be in default under the Borrower Lease, Lenders shall have the right (but not the obligation) to cause the default or defaults under the Borrower Lease to be remedied and otherwise exercise any and all rights of Borrower under the Borrower Lease, as may be necessary to prevent or cure any default and Lenders shall have the right to enter all or any portion of the Property, at such times and in such manner as Lenders reasonably deem necessary, to prevent or to cure any such default. Without limiting the foregoing, upon any such default, Borrower shall promptly execute, acknowledge and deliver to Lenders such instruments as may reasonably be required of Borrower to permit Lenders to cure any default under the Borrower Lease or permit Lenders to take such other action required to enable Lenders to cure or remedy the matter in default and preserve the security interest of Lenders under the Loan Documents with respect to the Borrower Facility.

(iii) Borrower shall use commercially reasonable efforts to enforce, in a commercially reasonable manner, each covenant or obligation of the Borrower Landlord in the Borrower Lease in accordance with its terms. Subject to the terms and requirements of the Borrower Lease, within ten (10) days after receipt of written request by Lenders, Borrower shall use reasonable efforts to obtain from the Borrower Landlord under the Borrower Lease and furnish to Lenders an estoppel certificate from Borrower Landlord stating the date through which rent has been paid and whether or not, to Borrower Landlord's knowledge, there are any defaults thereunder and specifying the nature of such claimed defaults, if any, and such other matters as Lenders may reasonably request or in the form required pursuant to the terms of the Borrower Lease. Borrower shall furnish to Lenders all information that Lenders may reasonably request from time to time in the possession of Borrower (or reasonably available to Borrower) concerning the Borrower Lease and Borrower's compliance with the Borrower Lease.

(iv) Borrower, promptly upon learning that Borrower Landlord has failed to perform the material terms and provisions under the Borrower Lease and immediately upon learning of a rejection or disaffirmance or purported rejection or disaffirmance of the Borrower Lease pursuant to any state or federal bankruptcy law, shall notify Lenders thereof. Borrower

shall promptly notify Lenders of any request that any party to the Borrower Lease makes for arbitration or other dispute resolution procedure pursuant to the Borrower Lease and of the institution of any such arbitration or dispute resolution. Borrower hereby authorizes Lenders to attend any such arbitration or dispute, and upon the occurrence and during the continuance of an Event of Default participate in any such arbitration or dispute resolution but such participation shall not be to the exclusion of Borrower; *provided, however, that*, in any case, Borrower shall consult with Lenders with respect to the matters related thereto. Borrower shall promptly deliver to Lenders a copy of the determination of each such arbitration or dispute resolution mechanism.

(v) If Lenders or their designee shall acquire or obtain a new Borrower Lease following a termination of the Borrower Lease, then Borrower shall have no right, title or interest whatsoever in or to such new Borrower Lease, or any proceeds or income arising from the estate arising under any such new Borrower Lease, including from any sale or other disposition thereof. Lenders or their designee shall hold such new Borrower Lease free and clear of any right or claim of Borrower.

(vi) Borrower shall promptly, after obtaining knowledge of such filing notify Lenders orally of any filing by or against Borrower Landlord under the Borrower Lease of a petition under the Bankruptcy Code or other applicable law. Borrower shall thereafter promptly give written notice of such filing to Lenders, setting forth any information available to Borrower as to the date of such filing, the court in which such petition was filed, and the relief sought in such filing. Borrower shall promptly deliver to Lenders any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating to such petition.

8.09 Licenses; Approvals. Borrower shall, and shall cause each of its Subsidiaries to, obtain and maintain all licenses, authorizations, consents, filings, exemptions, registrations and other Governmental Approvals necessary in connection with (i) the operation and conduct of its business and ownership of its properties, except where failure to do so could not reasonably be expected to have a Material Adverse Effect and (ii) the execution, delivery and performance of the Loan Documents and consummation of the Transactions.

8.10 Action under Environmental Laws. Borrower shall, and shall cause each of its Subsidiaries to, upon becoming aware of the presence of any Hazardous Materials or the existence of any environmental liability under applicable Environmental Laws with respect to their respective businesses, operations or properties, take all actions, at their cost and expense, as shall be necessary or advisable to investigate and clean up the condition of their respective businesses, operations or properties, including all required removal, containment and remedial actions, and restore their respective businesses, operations or properties to a condition in compliance with applicable Environmental Laws.

8.11 Use of Proceeds. The proceeds of the Loans will be used only as provided in **Section 2.05**. No part of the proceeds of the Loans will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board of Governors of the Federal Reserve System, including Regulations T, U and X.

8.12 Certain Obligations Respecting Subsidiaries; Further Assurances.

(a) **Subsidiary Guarantors.** Borrower will take such action, and will cause each of its Subsidiaries to take such action, from time to time as shall be necessary to ensure that all Subsidiaries are “Subsidiary Guarantors” hereunder. Without limiting the generality of the foregoing, in the event that Borrower or any of its Subsidiaries shall form or acquire any new Subsidiary, Borrower and its Subsidiaries will promptly and in any event within five (5) Business Days of the formation or acquisition of such Subsidiary:

(i) cause such new Subsidiary to become a “Subsidiary Guarantor” hereunder, and a “Grantor” under the Security Agreement, pursuant to a Guarantee Assumption Agreement;

(ii) take such action or cause such Subsidiary to take such action (including delivering such shares of stock together with undated transfer powers executed in blank) as shall be necessary to create and perfect valid and enforceable first priority (subject to Permitted Priority Liens) Liens on substantially all of the personal property of such new Subsidiary as collateral security for the obligations of such new Subsidiary hereunder; *provided that* neither AFT Pharmaceuticals Singapore PTE. LTD., a Singaporean private company limited by shares, nor AFT Pharmaceuticals (SE Asia) SND. BHD., a Malaysian private limited liability company, shall be required to enter into its Security Agreement on or prior to the date of the initial Borrowing, and shall be required to enter into its respective Security Agreement solely following the request of the Lenders (and within 30 days of such request);

(iii) to the extent that the parent of such Subsidiary is not a party to the Security Agreement or has not otherwise pledged Equity Interests in its Subsidiaries in accordance with the terms of the Security Agreement and this Agreement, cause the parent of such Subsidiary to execute and deliver a pledge agreement in favor of the Lenders in respect of all outstanding issued shares of such Subsidiary; and

(iv) deliver such proof of corporate action, incumbency of officers, opinions of counsel and other documents as is consistent with those delivered by each Obligor pursuant to **Section 6.01** or as the Majority Lenders shall have requested.

(b) **Further Assurances.** Each Subsidiary Guarantor will, and Borrower will, and will cause each of its Subsidiaries to, take such action from time to time as shall reasonably be requested by the Majority Lenders to effectuate the purposes and objectives of this Agreement. Without limiting the generality of the foregoing, each Subsidiary Guarantor will, and Borrower will, and will cause each Person that is required to be a Subsidiary Guarantor to, take such action from time to time (including executing and delivering such assignments, security agreements, control agreements and other instruments) as shall be reasonably requested by the Majority Lenders to create, in favor of the Lenders, perfected security interests and Liens in substantially all of the personal property of such Obligor as collateral security for the Obligations; *provided that* any such security interest or Lien shall be subject to the relevant requirements of the Security Documents.

8.13 Termination of Non-Permitted Liens. In the event that Borrower or any of its Subsidiaries shall become aware or be notified by the Lenders of the existence of any outstanding Lien against any Property of Borrower or any of its Subsidiaries, which Lien is not a Permitted Lien, Borrower shall use its best efforts to promptly terminate or cause the termination of such Lien.

8.14 Intellectual Property. In the event that the Obligor acquires Obligor Intellectual Property during the term of this Agreement, then the provisions of this Agreement shall automatically apply thereto and any such Obligor Intellectual Property shall automatically constitute part of the Collateral under the Security Documents, without further action by any party, in each case from and after the date of such acquisition (except that any representations or warranties of any Obligor shall apply to any such Obligor Intellectual Property only from and after the date, if any, subsequent to such acquisition that such representations and warranties are brought down or made anew as provided herein).

8.15 Post-Closing.

(a) Not later than 30 days following the date hereof, the Security Agreement described in **clause (ii)** of the definition thereof to have been duly executed and delivered by AFT AUS to the Lenders.

(b) Not later than 90 days following the date hereof, Hartley Atkinson shall have entered into either (i) an employment agreement with Borrower or (ii) a non-compete agreement with Borrower, with application for no less than two years, in each case, in form and substance reasonably satisfactory to the Lenders.

SECTION 9 NEGATIVE COVENANTS

Each Obligor covenants and agrees with the Lenders that, until the Commitments have expired or been terminated and all Obligations have been paid in full indefeasibly in cash:

9.01 Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, whether directly or indirectly, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and set forth on **Schedule 7.13(a)** and Permitted Refinancings thereof; *provided that*, in the case of any such Indebtedness secured by Liens that are not the subject of the Deed of Priority, such Indebtedness on and from the first Borrowing Date is subordinated to the Obligations on terms satisfactory to the Majority Lenders;

(c) Permitted Priority Debt and guarantees thereof by Subsidiaries of the Borrower;

(d) accounts payable to trade creditors for goods and services and current operating liabilities (not the result of the borrowing of money) incurred in the ordinary course of Borrower's or such Subsidiary's business in accordance with customary terms and paid within

the specified time, unless contested in good faith by appropriate proceedings and reserved for in accordance with GAAP;

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

(f) Indebtedness (i) of Borrower to any Subsidiary Guarantor and (ii) of any Subsidiary Guarantor to Borrower or any other Subsidiary Guarantor;

(g) Guarantees by Borrower of Indebtedness or lease obligations of any Subsidiary Guarantor and by any Subsidiary Guarantor of Indebtedness or lease obligations of Borrower or any other Subsidiary Guarantor; *provided that* the aggregate outstanding principal amount of such Indebtedness or lease obligations, when added to the aggregate principal amount of the outstanding Indebtedness permitted in reliance on **Section 9.01(h)**, does not exceed \$350,000 (or the Equivalent Amount in other currencies) at any time;

(h) normal course of business equipment financing; *provided that* (i) if secured, the collateral therefor consists solely of the assets being financed, the products and proceeds thereof and books and records related thereto, and (ii) the aggregate outstanding principal amount of such Indebtedness, when added to the aggregate principal amount of the outstanding Indebtedness permitted in reliance on **Section 9.01(g)**, does not exceed \$500,000 (or the Equivalent Amount in other currencies) at any time;

(i) Permitted Cure Debt; and

(j) Indebtedness approved in advance in writing by the Majority Lenders.

9.02 Liens. Borrower will not, and will not permit any of its Subsidiaries to, create, incur, assume or permit to exist any Lien on any property or asset now owned by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Liens securing the Obligations;

(b) any Lien on any property or asset of Borrower or any of its Subsidiaries existing on the date hereof and set forth in **Schedule 7.13(b)**; *provided that* (i) no such Lien shall extend to any other property or asset of Borrower or any of its Subsidiaries and (ii) any such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) Liens described in the definition of “Permitted Priority Debt”;

(d) Liens securing Indebtedness permitted under **Section 9.01(h)**; *provided that* such Liens are restricted solely to the collateral described in **Section 9.01(h)**;

(e) customary Liens, granted under supply agreements (including without limitation the supply agreements listed on **Schedule 7.14**), on Borrower’s and its Subsidiaries’ goods

purchased pursuant to such supply agreements, to secure the obligation to pay the purchase price therefor;

(f) Liens imposed by law which were incurred in the ordinary course of business, including (but not limited to) carriers', warehousemen's and mechanics' liens and other similar liens arising in the ordinary course of business and which (x) do not in the aggregate materially detract from the value of the Property subject thereto or materially impair the use thereof in the operations of the business of such Person or (y) are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the Property subject to such liens and for which adequate reserves have been made if required in accordance with GAAP;

(g) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other similar social security legislation;

(h) Liens securing taxes, assessments and other governmental charges, the payment of which is not yet due or is being contested in good faith by appropriate proceedings promptly initiated and diligently conducted and for which such reserve or other appropriate provisions, if any, as shall be required by GAAP shall have been made;

(i) 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 any of the Obligor;

(j) 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 any of the Obligor; and

(k) Bankers liens, rights of setoff and similar Liens incurred on deposits made in the ordinary course of business;

provided that no Lien otherwise permitted under any of the foregoing **Sections 9.02(b)** through **(h)** shall apply to any Material Intellectual Property.

9.03 Fundamental Changes and Acquisitions. Borrower will not, and will not permit any of its Subsidiaries to, (i) enter into any transaction of merger, amalgamation or consolidation (ii) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution) (iii) make any Acquisition or otherwise acquire any business or substantially all the property from, or capital stock of, or be a party to any acquisition of, any Person, except:

- (a) Investments permitted under **Section 9.05(e)** and **(f)**;
- (b) the merger, amalgamation or consolidation of any Subsidiary Guarantor with or into Borrower or any other Subsidiary Guarantor;
- (c) the sale, lease, transfer or other disposition by any Subsidiary Guarantor of any or all of its property (upon voluntary liquidation or otherwise) to Borrower or another Subsidiary Guarantor; and
- (d) the sale, transfer or other disposition of the capital stock of any Subsidiary Guarantor to Borrower or another Subsidiary Guarantor; and
- (e) Permitted Acquisitions in an amount not exceeding \$5,000,000 (or, if the third Borrowing is made, \$15,000,000) in the aggregate.

9.04 Lines of Business. Borrower will not, and will not permit any of its Subsidiaries to, engage to any material extent in any business other than the business engaged in on the date hereof by Borrower or any Subsidiary or a business reasonably related thereto.

9.05 Investments. Borrower will not, and will not permit any of its Subsidiaries to, make, directly or indirectly, or permit to remain outstanding any Investments except:

- (a) Investments outstanding on the date hereof and identified in **Schedule 9.05**;
- (b) operating deposit accounts with banks;
- (c) extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;
- (d) Permitted Cash Equivalent Investments;
- (e) Investments by Borrower and the Subsidiary Guarantors in Borrower's wholly-owned Subsidiary Guarantors (for greater certainty, Borrower shall not be permitted to have any direct or indirect Subsidiaries, other than AFT Orphan, that are not wholly-owned Subsidiaries);
- (f) the acquisition by Borrower of the portion of the equity in AFT Orphan not owned on the date hereof;
- (g) Hedging Agreements entered into in the ordinary course of Borrower's financial planning, in accordance with past practice, solely to hedge currency risks (and not for speculative purposes);
- (h) Investments consisting of security deposits with utilities and other like Persons made in the ordinary course of business;
- (i) employee loans, travel advances and guarantees in accordance with Borrower's usual and customary practices with respect thereto (if permitted by applicable law) which in the

aggregate shall not exceed \$200,000 outstanding at any time (or the Equivalent Amount in other currencies);

(j) Investments received in connection with any Insolvency Proceedings in respect of any customers, suppliers or clients and in settlement of delinquent obligations of, and other disputes with, customers, suppliers or clients; and

(k) Investments permitted under **Section 9.03**.

9.06 Restricted Payments. Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) Borrower may declare and pay dividends with respect to its capital stock payable solely in additional shares of its common stock;

(b) Borrower may purchase, redeem, retire, or otherwise acquire shares of its capital stock or other Equity Interests with the proceeds received from a substantially concurrent issue of new shares of its capital stock or other Equity Interests;

(c) Repayment, of a Permitted Investment made by Borrower or any Subsidiary Guarantor, by any of Borrower's wholly-owned Subsidiary Guarantors; and

(d) for the payment of dividends by any Subsidiary Guarantor to Borrower or to any other Subsidiary Guarantor.

9.07 Payments of Indebtedness. Borrower will not, and will not permit any of its Subsidiaries to, make any payments in respect of any Indebtedness other than (i) payments of the Obligations, (ii) scheduled payments of other Indebtedness and (iii) repayment of intercompany Indebtedness permitted in reliance upon **Section 9.01(f)**.

9.08 Change in Fiscal Year. Borrower will not, and will not permit any of its Subsidiaries to, change the last day of its fiscal year from that in effect on the date hereof, except to change the fiscal year of a Subsidiary acquired in connection with an Acquisition to conform its fiscal year to that of Borrower.

9.09 Sales of Assets, Etc. Unless Borrower simultaneously makes the prepayment required under **Section 3.03(b)(i)**, Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, exclusively license (in terms of geography or field of use), transfer, or otherwise dispose of any of its Property (including accounts receivable and capital stock of Subsidiaries) to any Person in one transaction or series of transactions (any thereof, an "**Asset Sale**"), except:

(a) transfers of cash in the ordinary course of its business for equivalent value;

(b) sales of inventory in the ordinary course of its business on ordinary business terms;

(c) development and other collaborative arrangements where such arrangements provide for the licenses or disclosure of Patents, Trademarks, Copyrights or other Intellectual

Property rights in the ordinary course of business and consistent with general market practices where such license requires periodic payments based on per unit sales of a product over a period of time and provided that such licenses must be true licenses as opposed to licenses that are sales transactions in substance;

- (d) transfers of Property by any Subsidiary Guarantor to any other Obligor;
- (e) dispositions of any Property that is obsolete or worn out or no longer used or useful in the Business; and
- (f) any transaction permitted under **Section 9.03** or **9.05**.

9.10 Transactions with Affiliates. Borrower will not, and will not permit any of its Subsidiaries to, sell, lease, license or otherwise transfer any assets to, or purchase, lease, license or otherwise acquire any assets from, or otherwise engage in any other transactions with, any of its Affiliates, except:

- (a) transactions between or among Obligor;
- (b) any transaction permitted under **Section 9.01, 9.03, 9.05, 9.06** or **9.09**;
- (c) customary compensation and indemnification of, and other employment arrangements with, directors, officers and employees of Borrower or any Subsidiary in the ordinary course of business,
- (d) Borrower may issue Equity Interests to Affiliates in exchange for cash; *provided that* the terms thereof are no less favorable (including the amount of cash received by Borrower) to Borrower than those that would be obtained in a comparable arm's-length transaction with a Person not an Affiliate of Borrower; and
- (e) the transactions set forth on **Schedule 9.10**.

9.11 Restrictive Agreements. Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any Restrictive Agreement other than (i) restrictions and conditions imposed by law or by this Agreement and (ii) Restrictive Agreements listed on **Schedule 7.15**.

9.12 Amendments to Material Agreements. Borrower will not, and will not permit any of its Subsidiaries to, (i) terminate any Material Agreement, unless (A) such Material Agreement is replaced with another agreement that, viewed as a whole, is on better terms for Borrower or such Subsidiary, or (B) the Lenders have provided their prior written consent (which consent shall not be unreasonably withheld or delayed) or (ii) enter into any amendment to or modification of any Material Agreement, unless (A) the Borrower's or such Subsidiary's rights under such Material Agreement, as amended, are as a whole, preserved or improved, or (B) the Lenders have provided their prior written consent (which consent shall not be unreasonably withheld or delayed).

9.13 Real Property. Borrower will not, and will not permit any of its Subsidiaries to, acquire any ownership interest in any real property.

9.14 Sales and Leasebacks. Except as disclosed on **Schedule 9.14**, Borrower will not, and will not permit any of its Subsidiaries to, become liable, directly or indirectly, with respect to any lease, whether an operating lease or a Capital Lease Obligation, of any property (whether real, personal, or mixed), whether now owned or hereafter acquired, (i) which Borrower or such Subsidiary has sold or transferred or is to sell or transfer to any other Person and (ii) which Borrower or such Subsidiary intends to use for substantially the same purposes as property which has been or is to be sold or transferred.

9.15 Hazardous Material. Borrower will not, and will not permit any of its Subsidiaries to, use, generate, manufacture, install, treat, release, store or dispose of any Hazardous Material, except in compliance with all applicable Environmental Laws or where the failure to comply could not reasonably be expected to result in a Material Adverse Change.

9.16 Accounting Changes. Borrower will not, and will not permit any of its Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP.

SECTION 10 FINANCIAL COVENANTS

10.01 Minimum Liquidity. Borrower shall maintain, (i) as of the last Business Day of each month, Liquidity in an amount which shall exceed the greater of (A) NZ\$4,000,000 and (B) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance required of Borrower by Borrower's Permitted Priority Debt creditors, and (ii) at all times, no less than NZ\$1,000,000 of unencumbered cash held in an account over which the Lenders have a first priority perfected security interest.

10.02 Minimum Revenue. Borrower and its Subsidiaries shall have annual Revenue (for each respective fiscal year, the "*Minimum Required Revenue*"):

(a) during the twelve month period ending on March 31, 2014, of at least NZ\$47,500,000;

(b) during the twelve month period ending on March 31, 2015, of at least NZ\$60,000,000; and

(c) during each twelve month period beginning on April 1, 2015 or any year thereafter, an amount equal to the sum of NZ\$10,000,000 and the Minimum Required Revenue for the prior fiscal year.

10.03 Cure Right.

(a) Notwithstanding anything to the contrary contained in **Section 11**, in the event that the Borrower fails to comply with any of the covenants contained in **Section 10.02** (such covenants for such applicable periods being the "*Specified Financial Covenants*"), Borrower

shall have the right, prior to the twelfth Payment Date, within 90 (ninety) days of the end of the respective fiscal year:

- (i) to issue additional shares of Equity Interests in exchange for cash (the “**Equity Cure Right**”), or
- (ii) to borrow Permitted Cure Debt (the “**Subordinated Debt Cure Right**” and, collectively with the Equity Cure Right, the “**Cure Right**”),

in an amount equal to (x) two (2) multiplied by (y) the Minimum Required Revenue less Borrower’s annual Revenue (the “**Cure Amount**”). The cash therefrom immediately shall be contributed as equity or subordinated debt (only as permitted pursuant to **Section 9.01**), as applicable, to Borrower, and upon the receipt by Borrower of the Cure Amount pursuant to the exercise of such Cure Right, such Cure Amount shall be deemed to constitute Revenue of Borrower for purposes of the Specified Financial Covenants and the Specified Financial Covenants shall be recalculated for all purposes under the Loan Documents. If, after giving effect to the foregoing recalculation, Borrower shall then be in compliance with the requirements of the Specified Financial Covenants, Borrower shall be deemed to have satisfied the requirements of the Specified Financial Covenants as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach of the Specified Financial Covenants that had occurred, the related Default and Event of Default, shall be deemed cured without any further action of Borrower or Lenders for all purposes under the Loan Documents.

(b) Notwithstanding anything herein to the contrary, the Cure Amount received by Borrower from investors investing in or lending to Borrower pursuant to **Section 10.03(a)** shall be used to immediately prepay the Loan, without any Prepayment Premium, credited in the order set forth in **Sections 3.03(b)(i)(A)-(E)**.

SECTION 11 EVENTS OF DEFAULT

11.01 Events of Default. Each of the following events shall constitute an “**Event of Default**”:

(a) Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Obligor shall fail to pay any Obligation (other than an amount referred to in **Section 11.01(a)**) when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five (5) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of Borrower or any of its Subsidiaries in or in connection with this Agreement, any other Loan Document or any CPS Document or any amendment or modification hereof or thereof, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement, any other Loan Document or any CPS Document or any amendment or modification hereof or thereof, shall: (i) prove to have been incorrect when made or deemed

made to the extent that such representation or warranty contains any materiality or Material Adverse Effect qualifier; or (ii) prove to have been incorrect in any material respect when made or deemed made to the extent that such representation or warranty does not otherwise contain any materiality or Material Adverse Effect qualifier;

(d) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in **Section 8.02, 8.03** (with respect to Borrower's existence), **8.11, 8.12, 8.14, 8.15, 9** or **10** (subject, in the case of any such failure under **Section 10.01** or **10.02**, to the cure right provided in **Section 10.03**);

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in **Section 11.01(a), (b)** or **(d)**), any other Loan Document or any CPS Document, and such failure shall continue unremedied for a period of 20 or more days;

(f) Borrower or any of its Subsidiaries shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable after giving effect to any applicable grace or cure period as provided by the terms of such Indebtedness;

(g) (i) any breach by an Obligor of a Material Agreement that results in a Material Adverse Effect, or any "event of default" or similar event by any Obligor under any Material Agreement, (ii) any material breach of, or "event of default" or similar event under, the documentation governing any Material Indebtedness shall occur, or (iii) any event or condition occurs (A) that results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of such Material Indebtedness or any trustee or agent on its or their behalf to cause such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; *provided that* this **Section 11.01(g)** shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Material Indebtedness.

(h) Any Obligor:

(i) becomes insolvent, or generally does not or becomes unable or presumed to be unable to pay its debts or meet its liabilities as the same become due, or admits in writing its inability to pay its debts generally, or declares any general moratorium on its indebtedness, or proposes a compromise or arrangement or deed of company arrangement between it and any class of its creditors;

(ii) commits an act of bankruptcy or makes an assignment of its property for the general benefit of its creditors or makes a proposal (or files a notice of its intention to do so);

(iii) institutes any corporate action, legal proceedings or other procedure or step seeking to adjudicate it an insolvent, or seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), or in relation to a composition of it or its debts or any other assignment, arrangement or other relief with any creditor, under any

federal, provincial or foreign Law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity, or files an answer admitting the material allegations of a petition filed against it in any such proceeding;

(iv) applies for the appointment of, or the taking of possession by, a receiver, interim receiver, administrative receiver, compulsory manager, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property; or

(v) takes any action, corporate or otherwise, to approve, effect, consent to or authorize any of the actions described in this **Section 11.01(h)** or **(i)**, or otherwise acts in furtherance thereof or fails to act in a timely and appropriate manner in defense thereof;

(i) any petition is filed, application made or other proceeding instituted or procedure or step taken against or in respect of Borrower or any Subsidiary:

(i) seeking to adjudicate it an insolvent;

(ii) seeking a receiving order against it;

(iii) seeking liquidation, dissolution, winding-up, reorganization, compromise, arrangement, adjustment, protection, moratorium, relief, stay of proceedings of creditors generally (or any class of creditors), deed of company arrangement or in relation to a composition of it or its debts or any assignment, arrangement or other relief with any creditor under any federal, provincial or foreign law now or hereafter in effect relating to bankruptcy, winding-up, insolvency, reorganization, receivership, plans of arrangement or relief or protection of debtors or at common law or in equity;

(iv) seeking the entry of an order for relief or the appointment of, or the taking of possession by, a receiver, interim receiver, administrative receiver, compulsory manager, receiver/manager, sequestrator, conservator, custodian, administrator, trustee, liquidator, voluntary administrator, receiver and manager or other similar official for it or any substantial part of its property, and such petition, application or proceeding continues undismissed, or unstayed and in effect, for a period of thirty (30) days after the institution thereof; *provided that* if an order, decree or judgment is granted or entered (whether or not entered or subject to appeal) against Borrower or such Subsidiary thereunder in the interim, such grace period will cease to apply; *provided further that* if Borrower or such Subsidiary files an answer admitting the material allegations of a petition filed against it in any such proceeding, such grace period will cease to apply; or

(v) seeking enforcement of any security interest over any assets of the Borrower or such Subsidiary;

(j) the Borrower or any Subsidiary is declared at risk pursuant to the Corporations (Investigation and Management) Act 1989 of New Zealand or a statutory manager is appointed or a step is taken with a view to such appointment in respect of it under that Act;

(k) more than \$500,000 of the assets of or shares in an Obligor are compulsorily acquired, or ordered sold, vested or divested, by or by order of any Governmental Authority or by law, or any steps are taken to effect any of the same;

(l) any other event occurs which, under the laws of any applicable jurisdiction, has an effect equivalent to any of the events referred to in either of **Section 11.01(h), (i), (j) or (k)**;

(m) one or more judgments for the payment of money, or any expropriation, attachment, sequestration, distress or execution affects any asset or assets with a value, in each case in an aggregate amount in excess of \$500,000 (or the Equivalent Amount in other currencies) shall be rendered against any Obligor or any Obligor's assets or any combination thereof and the same shall remain undischarged for a period of 45 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Obligor to enforce any such judgment;

(n) a Change of Control shall have occurred;

(o) a Material Adverse Change shall have occurred;

(p) (i) any Lien created by any of the Security Documents shall at any time not constitute a valid and perfected Lien on the applicable Collateral in favor of the Lenders, free and clear of all other Liens (other than Permitted Liens), (ii) except for expiration in accordance with its terms, any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**) shall for whatever reason cease to be in full force and effect, or (iii) any of the Security Documents or any Guarantee of any of the Obligations (including that contained in **Section 13**), or the enforceability thereof, shall be repudiated or contested by any Obligor;

(q) any injunction, whether temporary or permanent, shall be rendered against any Obligor that prevents the Obligors from selling any of their other material and commercially available products for more than 45 consecutive calendar days; and

(r) any restriction or requirement not in effect on the date hereof shall have been imposed, whether by legislative enactment, decree, regulation, order or otherwise, which limits the availability or the transfer of foreign exchange by any Obligor for the purpose of performing any obligation under the Loan Documents unless, within 30 days after the imposition of any such restriction or requirement, such Obligor shall have delivered to the Lenders evidence satisfactory to the Majority Lenders that foreign exchange will be made available to such Obligor for the purpose of performing its obligations under the Loan Documents to which it is a party.

11.02 Remedies. Upon the occurrence of any Event of Default, then, and in every such event (other than an Event of Default described in **Section 11.01(h), (i) or (j)**), and at any time thereafter during the continuance of such event, Majority Lenders may, by notice to Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued

interest thereon and all fees and other Obligations, shall become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor; and in case of an Event of Default described in **Section 11.01(h), (i) or (j)**, the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other Obligations, shall automatically become due and payable immediately (in the case of the Loans, at the Redemption Price therefor), without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Obligor.

SECTION 12 MISCELLANEOUS

12.01 No Waiver. No failure on the part of the Lenders to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under any Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under any Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

12.02 Notices. (a) All notices, requests, instructions, directions and other communications provided for herein (including any modifications of, or waivers, requests or consents under, this Agreement) shall be given or made in writing (including by telecopy) delivered, if to Borrower, another Obligor or the Lenders, to its address specified on the signature pages hereto or its Guarantee Assumption Agreement, as the case may be, or at such other address as shall be designated by such party in a notice to the other parties. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given upon receipt of a legible copy thereof, in each case given or addressed as aforesaid. All such communications provided for herein by telecopy shall be confirmed in writing promptly after the delivery of such communication (it being understood that non-receipt of written confirmation of such communication shall not invalidate such communication). Notwithstanding anything to the contrary in this Agreement, all notices, documents, certificates and other deliverables to the Lenders by any Obligor may be made solely to the Control Agent and the Control Agent shall promptly deliver such notices, documents, certificates and other deliverables to the other Lenders hereunder.

(b) Each notice, communication or other document delivered under the Loan Documents by any Obligor, unless submitted in the English language, shall be accompanied by an English translation thereof and the English version shall govern in the event of any conflict with the non-English version thereof; provided that if any such conflict should arise with respect to any authorizations or approvals of any governmental agency or authority of or in its jurisdiction of organization, any constitutional, statutory or other official document of or from its jurisdiction of organization, or any Loan Document not originally executed in English, then the non-English language version thereof shall govern

12.03 Expenses, Indemnification, Etc.

(a) **Expenses.** Borrower agrees to pay or reimburse (i) the Lenders for all of their reasonable out of pocket costs and expenses (including the reasonable fees and expenses of Morrison & Foerster LLP, special counsel to the Lenders, and any sales, goods and services or other similar taxes applicable thereto, and printing, reproduction, document delivery, communication and travel costs) in connection with (x) the negotiation, preparation, execution and delivery of this Agreement, the other Loan Documents, the CPS Documents and the making of the Loans (exclusive of post-closing costs), (y) post-closing costs, such as those related to filings or recordations, document production costs, or general inquiries in connection with administering the Loan Documents on an ongoing basis, including without limitation potential amendments or waivers, whether or not any amendment or waiver is signed, and (z) the negotiation or preparation of any modification, supplement or waiver of any of the terms of this Agreement or any of the other Loan Documents (whether or not consummated) and (ii) the Lenders for all of their out of pocket costs and expenses (including the fees and expenses of legal counsel) in connection with any enforcement or collection proceedings resulting from the occurrence of an Event of Default; *provided, however, that* Borrower shall not be required to pay or reimburse any amounts pursuant to **Section 12.03(a)(i)(x)** in excess of \$200,000; *provided further that*, so long as the Loans (except for the third Borrowing) are consummated and all Commitments fully drawn prior to the expiry of the Commitment Period, then such fees shall be credited from the fees paid by the Borrower pursuant to **Section 2.03**.

(b) **Indemnification.** Borrower hereby indemnifies the Lenders, their Affiliates, and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties (each, an “**Indemnified Party**”) from and against, and agrees to hold them harmless against, any and all Claims and Losses of any kind (including reasonable fees and disbursements of counsel), joint or several, that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or relating to any investigation, litigation or proceeding or the preparation of any defense with respect thereto arising out of or in connection with or relating to this Agreement or any of the other Loan Documents or the transactions contemplated hereby or thereby or any use made or proposed to be made with the proceeds of the Loans, whether or not such investigation, litigation or proceeding is brought by Borrower, any of its shareholders or creditors, an Indemnified Party or any other Person, or an Indemnified Party is otherwise a party thereto, and whether or not any of the conditions precedent set forth in **Section 6** are satisfied or the other transactions contemplated by this Agreement are consummated, except to the extent such Claim or Loss is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party’s gross negligence or willful misconduct. No Obligor shall assert any claim against any Indemnified Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans. Borrower, its Subsidiaries and Affiliates and their respective directors, officers, employees, attorneys, agents, advisors and controlling parties are each sometimes referred to in this Agreement as a “**Borrower Party**.” No Lender shall assert any claim against any Borrower Party, on any theory of liability, for consequential, indirect, special or punitive damages arising out of or otherwise relating to this Agreement or any of the other Loan Documents or any of the transactions contemplated hereby or thereby or the actual or proposed use of the proceeds of the Loans.

12.04 Amendments, Etc. Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be modified or supplemented only by an instrument in writing signed by Borrower and the Lenders. Any consent, approval, (including without limitation any approval of or authorization for any amendment to any of the Loan Documents), instruction or other expression of the Lenders under any of the Loan Documents may be obtained by an instrument in writing signed in one or more counterparts by Majority Lenders; provided however, that the consent of all of the Lenders shall be required to:

- (i) amend, modify, discharge, terminate or waive any of the terms of this Agreement if such amendment, modification, discharge, termination or waiver would increase the amount of the Loans, reduce the fees payable hereunder, reduce interest rates or other amounts payable with respect to the Loans, extend any date fixed for payment of principal, interest or other amounts payable relating to the Loans or extend the repayment dates of the Loans;
- (ii) amend the provisions of **Section 6**;
- (iii) amend, modify, discharge, terminate or waive any Security Document if the effect is to release a material part of the Collateral subject thereto otherwise than pursuant to the terms hereof or thereof; or
- (iv) amend this **Section 12.04**.

Notwithstanding anything to the contrary herein, a Defaulting Lender shall not have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

12.05 Successors and Assigns.

(a) **General.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lenders. Any of the Lenders may assign or otherwise transfer their rights or obligations hereunder to an assignee in accordance with the provisions of **Section 12.05(b)**, (ii) by way of participation in accordance with the provisions of **Section 12.05(e)** or (iii) by way of pledge or assignment of a security interest subject to the restrictions of **Section 12.05(f)**. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 12.05(d)** and, to the extent expressly contemplated hereby, the Indemnified Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) **Assignments by Lenders.** Any of the Lenders may at any time assign to one or more Eligible Transferees (or, if an Event of Default has occurred and is continuing, to any Person) all or a portion of their rights and obligations under this Agreement (including all or a portion of the Commitment and the Loans at the time owing to it); *provided, however, that* no such assignment shall be made to Borrower, an Affiliate of Borrower, or any employees or directors of Borrower at any time. Subject to the recording thereof by the Lenders pursuant to **Section 12.05(c)**, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Acceptance, have the rights and obligations of the Lenders under this Agreement, and correspondingly the assigning Lender shall, to the extent of the interest assigned by such Assignment and Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance covering all of a Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 5** and **Section 12.03**. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this **Section 12.05(b)** shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 12.05(e)**.

(c) **Amendments to Loan Documents.** Each of the Lenders and the Obligors agrees to enter into such amendments to the Loan Documents, and such additional Security Documents and other instruments and agreements, in each case in form and substance reasonably acceptable to the Lenders and the Obligors, as shall reasonably be necessary to implement and give effect to any assignment made under this **Section 12.05**.

(d) **Register.** Each Lender, acting solely for this purpose as an agent of Borrower, shall maintain at one of its offices (which shall be the office of the Control Agent) a register for the recordation of the name and address of any assignee of the Lenders and the Commitment and outstanding principal amount of the Loans owing thereto (the "**Register**"). The entries in the Register shall be conclusive, absent manifest error, and Borrower shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as the "Lender" hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrower, at any reasonable time and from time to time upon reasonable prior notice.

(e) **Participations.** Any of the Lenders may at any time, without the consent of, or notice to, Borrower, sell participations to any Person (other than a natural person, or Borrower or any of Borrower's Affiliates or Subsidiaries, or any Competitor or Subsidiary thereof) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of the Commitment and/or the Loans owing to it); *provided that* (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrower shall continue to deal solely and directly with the Lenders in connection therewith. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided that* such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that would (i) increase or extend the

term of such Lender's Commitment, (ii) extend the date fixed for the payment of principal of or interest on the Loans or any portion of any fee hereunder payable to the Participant, (iii) reduce the amount of any such payment of principal, or (iv) reduce the rate at which interest is payable thereon to a level below the rate at which the Participant is entitled to receive such interest.

Subject to **Section 12.05(e)**, Borrower agrees that each Participant shall be entitled to the benefits of **Section 5** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 12.05(b)**. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 4.04(a)** as though it were the Lender.

(f) **Limitations on Rights of Participants.** A Participant shall not be entitled to receive any greater payment under **Section 5.01** or **5.03** than a Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with Borrower's prior written consent.

(g) **Certain Pledges.** The Lenders may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement and any other Loan Document to secure obligations of the Lenders, including any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided that* no such pledge or assignment shall release the Lenders from any of their obligations hereunder or substitute any such pledgee or assignee for the Lenders as a party hereto.

12.06 Survival. The obligations of Lender and Borrower, as applicable, under **Sections 5.01, 5.02, 5.03, 12.03, 12.05, 12.09, 12.10, 12.11, 12.12, 12.13, 12.14, 12.16** and **Section 13** (solely to the extent guaranteeing any of the obligations under the foregoing Sections) shall survive the repayment of the Loans and the termination of the Commitment and, in the case of the Lenders' assignment of any interest in the Commitment or the Loans hereunder, shall survive, in the case of any event or circumstance that occurred prior to the effective date of such assignment, the making of such assignment, notwithstanding that the Lenders may cease to be "Lenders" hereunder. In addition, each representation and warranty made, or deemed to be made by a notice of the Loans, herein or pursuant hereto shall survive the making of such representation and warranty.

12.07 Captions. The table of contents and captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

12.08 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

12.09 Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

12.10 Jurisdiction, Service of Process and Venue.

(a) **Submission to Jurisdiction.** Each Obligor agrees that any suit, action or proceeding with respect to this Agreement or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 12.10(a)** is for the benefit of the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, the Lenders may take concurrent proceedings in any number of jurisdictions.

(b) **Appointment of Process Agent.** Borrower and each Subsidiary Guarantor hereby irrevocably appoint CT Corporation System (the “**Process Agent**”), with an office on the date hereof at 111 Eighth Avenue, New York, New York 10011, as its authorized agent with all powers necessary to receive on its behalf service of copies of the summons and complaint and any other process which may be served in any action or proceeding arising out of or relating to the Loan Documents in any of the courts in and of the State of Texas. Such service may be made by mailing or delivering a copy of such process to such Obligor in care of the Process Agent at the Process Agent’s above address and each Obligor hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf and agrees that the failure of the Process Agent to give any notice of any such service to each Obligor shall not impair or affect the validity of such service or of any judgment rendered in any action or proceeding based thereon. As an alternative method of service, Borrower and each Subsidiary Guarantor also irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to such Obligor at its address specified in **Section 12.02**. If for any reason CT Corporation System shall cease to act as Process Agent, each Obligor shall appoint forthwith, in the manner provided for herein, a successor Process Agent qualified to act as an agent for service of process with respect to all courts in and of the State of Texas and acceptable to the Majority Lenders.

(c) **Alternative Process.** Nothing herein shall in any way be deemed to limit the ability of the Lenders to serve any such process or summonses in any other manner permitted by applicable law or to limit the right of the Lenders to bring any action or proceeding against any Obligor or its property in the courts of other jurisdictions.

(d) **Waiver of Venue, Etc.** Each Obligor irrevocably waives to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document and hereby further irrevocably waives to the fullest extent permitted by law any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment (in respect of which time for all appeals has elapsed) in any such suit, action or proceeding shall be conclusive and may be enforced in any court to the jurisdiction of which such Obligor is or may be subject, by suit upon judgment.

12.11 Waiver of Jury Trial. EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER

LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

12.12 Waiver of Immunity. To the extent that any Obligor may be or become entitled to claim for itself or its Property or revenues any immunity on the ground of sovereignty or the like from suit, court jurisdiction, attachment prior to judgment, attachment in aid of execution of a judgment or execution of a judgment, and to the extent that in any such jurisdiction there may be attributed such an immunity (whether or not claimed), such Obligor hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity with respect to its obligations under this Agreement, the other Loan Documents and the CPS Documents.

12.13 Entire Agreement. This Agreement, the other Loan Documents and the CPS Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. EACH OBLIGOR ACKNOWLEDGES, REPRESENTS AND WARRANTS THAT IN DECIDING TO ENTER INTO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE CPS DOCUMENTS OR IN TAKING OR NOT TAKING ANY ACTION HEREUNDER OR THEREUNDER, IT HAS NOT RELIED, AND WILL NOT RELY, ON ANY STATEMENT, REPRESENTATION, WARRANTY, COVENANT, AGREEMENT OR UNDERSTANDING, WHETHER WRITTEN OR ORAL, OF OR WITH THE LENDERS OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND THE CPS DOCUMENTS.

12.14 Severability. If any provision hereof is found by a court to be invalid or unenforceable, to the fullest extent permitted by applicable law the parties agree that such invalidity or unenforceability shall not impair the validity or enforceability of any other provision hereof.

12.15 No Fiduciary Relationship. Borrower acknowledges that the Lenders have no fiduciary relationship with, or fiduciary duty to, Borrower arising out of or in connection with this Agreement or the other Loan Documents, and the relationship between the Lenders and Borrower is solely that of creditor and debtor. This Agreement, the other Loan Documents and the CPS Documents do not create a joint venture among the parties.

12.16 Confidentiality. The Lenders agree to maintain in accordance with the terms of the non-disclosure agreement dated September 3, 2013 between Borrower and Capital Royalty L.P (the “*Non-Disclosure Agreement*”) the confidentiality of any Confidential Information (as defined in the Non-Disclosure Agreement) that is disclosed by, or on behalf of, any Obligor to any Lenders or their Representatives (as defined in the Non-Disclosure Agreement). Any new Lender that becomes party to this Agreement hereby agrees to be bound by the terms of the Non-Disclosure Agreement. Notwithstanding clause 4 of the Non-Disclosure Agreement, the obligations of the Lenders under this **Section 12.16** shall continue for a period of five (5) years after the repayment of the Loans and the termination of the Commitment. The parties to this Agreement shall prepare a mutually agreeable press release announcing the completion of this transaction on the first Borrowing Date.

12.17 USA PATRIOT Act. The Lenders hereby notify Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), they are required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Act.

12.18 Maximum Rate of Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (in each case, the “*Maximum Rate*”). If the Lenders shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans, and not to the payment of interest, or, if the excessive interest exceeds such unpaid principal, the amount exceeding the unpaid balance shall be refunded to the applicable Obligor. In determining whether the interest contracted for, charged, or received by the Lenders exceeds the Maximum Rate, the Lenders may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Indebtedness and other obligations of any Obligor hereunder, or (d) allocate interest between portions of such Indebtedness and other obligations under the Loan Documents to the end that no such portion shall bear interest at a rate greater than that permitted by applicable Law.

12.19 Certain Waivers.

(a) Real Property Security Waivers.

(i) Each Obligor acknowledges that all or any portion of the Obligations may now or hereafter be secured by a Lien or Liens upon real property evidenced by certain documents including, without limitation, deeds of trust and assignments of rents. Lenders may, pursuant to the terms of said real property security documents and applicable law, foreclose under all or any portion of one or more of said Liens by means of judicial or nonjudicial sale or sales. Each Obligor agrees that Lenders may exercise whatever rights and remedies they may have with respect to said real property security, all without affecting the liability of any Obligor under the Loan Documents, except to the extent Lenders realize payment by such action or proceeding. No election to proceed in one form of action or against any party, or on any obligation shall constitute a waiver of Lenders' rights to proceed in any other form of action or against any Obligor or any other Person, or diminish the liability of any Obligor, or affect the right of Lenders to proceed against any Obligor for any deficiency, except to the extent Lenders realize payment by such action, notwithstanding the effect of such action upon any Obligor's rights of subrogation, reimbursement or indemnity, if any, against Obligor or any other Person.

(ii) To the extent permitted under applicable law, each Obligor hereby waives all rights and defenses that such Obligor may have because the Obligations are or may be secured by real property. This means, among other things:

(A) Lenders may collect from any Obligor without first foreclosing on any real or personal property collateral pledged by any other Obligor;

(B) If Lenders foreclose on any real property collateral pledged by any Obligor:

(1) The amount of the Loans may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and

(2) Lenders may collect from each Obligor even if Lenders, by foreclosing on the real property collateral, have destroyed any right that such Obligor may have to collect from any other Obligor.

(3) To the extent permitted under applicable law, this is an unconditional and irrevocable waiver of any rights and defenses each Obligor may have because the Obligations are or may be secured by real property.

(b) **Waiver of Marshaling.** WITHOUT LIMITING THE FOREGOING IN ANY WAY, EACH OBLIGOR HEREBY IRREVOCABLY WAIVES AND RELEASES, TO THE EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS IT MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW, CONTRACT OR OTHERWISE) TO REQUIRE THE MARSHALING OF ANY ASSETS OF ANY OBLIGOR, WHICH RIGHT OF MARSHALING MIGHT OTHERWISE ARISE FROM ANY PAYMENTS MADE OR OBLIGATIONS PERFORMED.

SECTION 13 GUARANTEE

13.01 The Guarantee. The Subsidiary Guarantors hereby jointly and severally guarantee to the Lenders and their successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of the principal of and interest on the Loans and all fees and other amounts from time to time owing to the Lenders by Borrower under this Agreement or under any other Loan Document and by any other Obligor under any of the Loan Documents, in each case strictly in accordance with the terms thereof (such obligations being herein collectively called the “*Guaranteed Obligations*”). The Subsidiary Guarantors hereby further jointly and severally agree that if Borrower shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, the Subsidiary Guarantors will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

13.02 Obligations Unconditional. The obligations of the Subsidiary Guarantors under **Section 13.01** are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of Borrower under this Agreement or any other agreement or instrument referred to herein, or any substitution, release or exchange of any other guarantee of or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor or reduce, release or prejudice any obligation of a Subsidiary Guarantor hereunder, it being the intent of this

Section 13.02 that the obligations of the Subsidiary Guarantors hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of the Subsidiary Guarantors hereunder, which shall remain absolute and unconditional as described above:

(a) at any time or from time to time, without notice to the Subsidiary Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;

(b) any of the acts mentioned in any of the provisions of this Agreement or any other agreement or instrument referred to herein shall be done or omitted;

(c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under this Agreement or any other agreement or instrument referred to herein shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with; or

(d) any lien or security interest granted to, or in favor of, the Lenders as security for any of the Guaranteed Obligations shall fail to be perfected.

Each Subsidiary Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that the Lenders exhaust any right, power or remedy or proceed against Borrower or any other Subsidiary Guarantor under this Agreement or any other agreement or instrument referred to herein, or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

13.03 Reinstatement. The obligations of the Subsidiary Guarantors under this **Section 13** shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Subsidiary Guarantors jointly and severally agree that they will indemnify the Lenders on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Lenders in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

13.04 Subrogation and deferral of rights. Each Subsidiary Guarantor hereby jointly and severally agrees that until the payment and satisfaction in full of all Guaranteed Obligations and the expiration and termination of the Commitment of the Lenders under this Agreement it shall not exercise any right or remedy arising by reason of any performance by it of its guarantee in **Section 13.01**, whether by subrogation or otherwise, against Borrower or any other guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations and shall not in any form of administration of the Borrower or any other guarantor of any of the Guaranteed Obligations (including liquidation, winding up, bankruptcy, voluntary

administration, dissolution or receivership or any analogous process) prove for or claim, or exercise any vote or other rights in respect of, any indebtedness of any nature owed to it by the Borrower of such other guarantor.

13.05 Remedies. The Subsidiary Guarantors jointly and severally agree that, as between the Subsidiary Guarantors and the Lenders, the obligations of Borrower under this Agreement and under the other Loan Documents may be declared to be forthwith due and payable as provided in **Section 11** (and shall be deemed to have become automatically due and payable in the circumstances provided in **Section 11**) for purposes of **Section 13.01** notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by Borrower) shall forthwith become due and payable by the Subsidiary Guarantors for purposes of **Section 13.01**.

13.06 Instrument for the Payment of Money. Each Subsidiary Guarantor hereby acknowledges that the guarantee in this **Section 13** constitutes an instrument for the payment of money, and consents and agrees that the Lender, at its sole option, in the event of a dispute by such Subsidiary Guarantor in the payment of any moneys due hereunder, shall have the right to proceed by motion for summary judgment in lieu of complaint pursuant to N.Y. Civ. Prac. L&R § 3213.

13.07 Continuing Guarantee. The guarantee in this **Section 13** is a continuing guarantee, and shall apply to all Guaranteed Obligations whenever arising.

13.08 Rights of Contribution. The Subsidiary Guarantors hereby agree, as between themselves, that if any Subsidiary Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Subsidiary Guarantor of any Guaranteed Obligations, each other Subsidiary Guarantor shall, on demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Subsidiary Guarantor's *Pro rata* Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Subsidiary Guarantor to any Excess Funding Guarantor under this **Section 13.08** shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Subsidiary Guarantor under the other provisions of this **Section 13** and such Excess Funding Guarantor shall not exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this **Section 13.08**, (i) "**Excess Funding Guarantor**" means, in respect of any Guaranteed Obligations, a Subsidiary Guarantor that has paid an amount in excess of its *Pro rata* Share of such Guaranteed Obligations, (ii) "**Excess Payment**" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its *Pro rata* Share of such Guaranteed Obligations and (iii) "**Pro Rata Share**" means, for any Subsidiary Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate present fair saleable value of all properties of such Subsidiary Guarantor (excluding any shares of stock of any other Subsidiary Guarantor) exceeds the amount of all the debts and liabilities of such

Subsidiary Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Subsidiary Guarantor hereunder and any obligations of any other Subsidiary Guarantor that have been Guaranteed by such Subsidiary Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Subsidiary Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of Borrower and the Subsidiary Guarantors hereunder and under the other Loan Documents) of all of the Subsidiary Guarantors, determined (A) with respect to any Subsidiary Guarantor that is a party hereto on the date hereof, as of the date hereof, and (B) with respect to any other Subsidiary Guarantor, as of the date such Subsidiary Guarantor becomes a Subsidiary Guarantor hereunder.

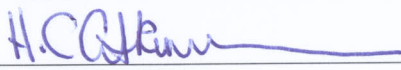
13.09 General Limitation on Guarantee Obligations. In any action or proceeding involving any provincial, territorial or state corporate law, or any state or federal bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Subsidiary Guarantor under **Section 13.01** would otherwise, taking into account the provisions of **Section 13.08**, be held or determined to be void, invalid or unenforceable, or subordinated to the claims of any other creditors, on account of the amount of its liability under **Section 13.01**, then, notwithstanding any other provision hereof to the contrary, the amount of such liability shall, without any further action by such Subsidiary Guarantor, the Lenders or any other Person, be automatically limited and reduced to the highest amount that is valid and enforceable and not subordinated to the claims of other creditors as determined in such action or proceeding.

[Signature Pages Follow]

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

BORROWER:


AFT PHARMACEUTICALS LIMITED

By 
Hartley Atkinson
Managing Director

Address for Notices:
Level 1, 129 Hurstmere Road
Takapuna, Auckland 0622
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Tel.: +64-9-4880232
Fax: +64-9-4880234
Email: hartley@aftpharm.com

SUBSIDIARY GUARANTORS:

AFT ORPHAN PHARMACEUTICALS LIMITED

By 
Hartley Atkinson
Managing Director

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By HC. Atkinson
Hartley Atkinson
Managing Director

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LTD.

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Hartley Atkinson
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BHD.

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Hartley Atkinson
Managing Director

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Fax: +64-9-4880234
Email: hartley@aftpharm.com

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP
L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II
GP LLC, its General Partner

By Charles W. Tate

Name: Charles Tate

Title: Sole Member

Address for Notices:

1000 Main Street, Suite 2500

Houston, TX 77002

Attn: General Counsel

Tel.: 713.209.7350

Fax: 713.209.7351

Email: adorenbaum@capitalroyalty.com

CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” L.P.

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP L.P., its General
Partner

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP LLC, its
General Partner

By Charles W. Tate

Name: Charles Tate

Title: Sole Member

Address for Notices:

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Houston, TX 77002

Attn: General Counsel

Tel.: 713.209.7350

Fax: 713.209.7351

Email: adorenbaum@capitalroyalty.com

Schedule 1
to Term Loan Agreement

COMMITMENTS

Lender	Commitment	Proportionate Share
Capital Royalty Partners II L.P.	\$7,748,225.78	25.8%
Capital Royalty Partners II – Parallel Fund “A” L.P.	\$22,251,774.23	74.2%
TOTAL	\$30,000,000	100%

Schedule 7.05(b)
to Term Loan Agreement

CERTAIN INTELLECTUAL PROPERTY

A. Maxigesic™ Patents and Patent Applications

Country	Number	Status	Next Step	File ref
1. Australia	2005260243	Patent granted	Attend to annual maintenance fees by 7 July each year.	P1652
2. Brazil	PI 0512756-4	Application filed.	Waiting for the application to receive its turn for examination. The examiner's report is not expected to issue until 2013/14. Attend to annual maintenance fees by 6 October each year.	P1653
3. Canada	2,570,474	Patent granted	Attend to annual maintenance fees by 7 July each year.	P1644
4. China	200580022214.8	Patent application under appeal.	Hearing to the Chinese court in relation to Patent Office refusal to allow a patent.	P1643
EP Community countries as below — 5. AT 6. BE 7. BG 8. CH/LI 9. CY 10. CZ 11. DE 12. DK 13. EE 14. ES 15. FI 16. FR 17. GR 18. HU 19. IE 20. IS 21. IT	764510.3	Patent granted	Attend to annual maintenance fees by 7 July each year.	P1645

22. LT 23. LU 24. LV 25. MC 26. NL 27. PL 28. PT 29. RO 30. SE 31. SI 32. SK 33. TR				
34. India	7831/DELNP/2006	AFT decided to allow this patent to lapse.	None.	P1655
35. Indonesia	W00 2006 03794	Patent granted	Attend to annual renewal fees by 7 July each year (next fee due in 2014).	P1656
36. Japan	520251/2007	Application under examination	Waiting for examiner's reply to submissions filed against examiner's objections.	P1661
37. Korea	10-2007-002407	Patent granted		P1657
38. Malaysia	PI 20064704	Application under examination.	Waiting for the examiner's reply to our submissions filed against his objections. Expect allowance shortly on basis of EU grant.	P1649
39. Mexico	2007/000117	Patent granted	Attend to annual renewal fees by 7 July each year from 2017.	P1658
40. New Zealand	552181	Patent granted	Attend to periodic renewal fees, the next of which is due by 7 July 2015.	P1786
41. Philippines	1-2006-502645	Patent granted	Attend to annual renewal fees.	P1648
42. Russia	20100147287	Patent granted	Attend to annual renewal fees by 7 July each year.	P1659
43. Singapore	200608968-4	Patent granted	Attend to annual renewal fees by 7 July each year.	P1654
44. South Africa	2007/0896	Patent granted	Attend to annual renewal fees by 7 July each year.	P1660
45. United Kingdom	2,431,346	Patent granted	Attend to annual renewal fees by 7 July each year.	P1646

46. United States	13/857,802 (continuation)	Application filed	Continuation application awaiting its turn for examination. Parent application rejected by Board of Appeals.	P1650
47. Vietnam	1-2007-00270	Patent granted	Attend to annual renewal fees by 13 June each year	P1647

B. Maxiclear™ Patents and Patent Applications

Country	Number	Status	Next step	File ref
1. Australia	2005333081	Patent granted.	Pay maintenance fees by 17 July each year.	P1867
2. Canada	2612179	Application under examination	Waiting for reply to submissions filed against examiner's objections. Pay maintenance fees by 17 June each year.	P1864
European countries as listed below- 3. Albania 4. Germany 5. Spain 6. France 7. Great Britain 8. Ireland 9. Italy 10. Poland 11. Turkey	1896022	Patent granted.	Pay maintenance fees by 17 June each year.	P1855
12. Hong Kong	1112407	Patent granted.	Pay maintenance fees by 17 June each year, from 2016 onwards.	P1857
13. Mexico	MX/a/2007/016065	Patent granted.	Pay renewal fees periodically – next fee due by 17 June 2017	P1873

14. New Zealand	541960	Patent granted.	Pay renewal fees periodically – next fee due by 17 June 2015	P1865
15. New Zealand	588134 (divisional application) ¹	Patent granted.	Pay renewal fees periodically – next fee due by 17 June 2015	P1921
16. Russia	2008100280	Patent granted.	Pay maintenance fees by 17 June each year.	P1872
17. Singapore	201004295	Under examination	Waiting for reply from the examiner.	P1871
18. South Africa	2008/00469	Patent granted.	Pay maintenance fees by 17 June each year.	P1866
19. United States	8603523	Patent granted.	Pay renewal fees periodically	P1870
20. Vietnam	1-2008-01627	Application filed.	Application awaiting its turn for examination.	P1868

C. Other patents related to Maxiclear™

Country	Number	Status	Next step	File
New Zealand	575838	Patent granted	Attend to periodic renewal fees.	P1841

D. Maxigesic OA Patent Applications

Country	Number	Status	Next Step	File ref
1. Australia	2009304002	Patent granted.	Attend to annual maintenance fees	P2051
2. Brazil	0914086-7	Application filed.	Application awaiting its turn for examination (a request for examination has been filed). Attend to annual maintenance fees by 12	P2052

¹ This divisional application is directed to 2.5 mg loratadine as the only active ingredient for use four times daily for treating upper respiratory/mucosal congestion. The application thus does not cover Maxiclear but was filed out of the Maxiclear application.

			October each year.	
3. Canada	2735834	Application filed	File request for examination by 12 October 2014. Attend to annual maintenance fees by 12 October each year.	P2053
4. Chile	678-2011	Under examination.	Wait for reply from examiner. Attend to annual maintenance fees from 28 March 2021.	P2054
5. China	18456171	Under examination.	Wait for reply from examiner. Annual maintenance fees are not due until after the examination stage.	P2055
6. Colombia	11-58771	Application allowed to lapse in view of non-patentability of Swiss claims or methods of medical treatment in Columbia.	Application allowed to lapse in view of non-patentability of Swiss claims or methods of medical treatment in Columbia.	P2056
7. European Community	09820803.6	Under examination.	Wait for reply from examiner. Attend to annual maintenance fees by 12 October each year.	P2058
8. Egypt	542/2011	Application filed.	Application awaiting its turn for examination (a request for examination has been filed). Attend to annual maintenance fees by 11 October each year.	P2057
9. India	598?MUMNP/2011	Application filed.	Application awaiting its turn for examination (a request for examination has been filed). Attend to annual maintenance fees after the examination stage.	P2059
10. Indonesia	W00 2011 01191	Application filed.	Application awaiting its turn for examination (a request for examination has been filed).	P2060

			Attend to annual maintenance fees after the examination stage.	
11. Japan	2011-530978	Under examination	Respond to examiner's objections. Attend to annual maintenance fees after the examination stage.	P2061
12. Korea	10-2011-7011015	Application filed.	File request for examination by 12 October 2014. Attend to annual maintenance fees after the examination stage.	P2062
13. Malaysia	PI 2011001017	Application filed	Waiting for examination to occur (a request for examination has been filed) Attend to annual maintenance fees after the examination stage.	P2063
14. Mexico	MX/a/2011/003928	Under examination	File response to examiner's objections (agent has instructions to do this).	P2064
15. Morocco	32635	Patent granted	Pay annual maintenance fees from 12 October 2014	P2065
16. New Zealand	591496	Patent granted	Attend to renewal fees, the first of which is due by 12 October 2013.	P2050
17. Nigeria	NG/C/2011/806	Patent granted	Attend to renewal fees due by 12 October each year.	P2066
18. Philippines	1-2011-500705	Application allowed	Pay final grant fees (have instructed agent to do this) Attend to renewal fees due by 12 October each year (beginning in 2014).	P2067
19. Russia	2011111792	Examiner has approved application as suitable for the grant of patent.	Report patent certificate when it issues (certificate expected shortly). Attend to renewal fees due by 12 October each year.	P2068
20. Singapore	201101786-0	Patent granted	Attend to renewal fees due by 12 October each year.	P2069

21. South Africa	2011/01752	Patent granted	Attend to renewal fees due by 12 October each year.	P2070
22. Switzerland	658/11	Under examination	Waiting for examiner's reply to submissions. Attend to maintenance fees due by 12 October each year.	P2071
23. Turkey	2011/02810	Patent granted	Attend to renewal fees due by 12 October each year.	P2072
24. United Kingdom	1105249.5	Patent granted	Attend to renewal fees due by 12 October each year.	P2075
25. United States	13/062,985	Application under examination.	Deal with examiner to overcome objections. Attend to renewal fees after grant of patent.	P2073
26. Venezuela	00449-3013	Application filed.	Patent expected to grant shortly in the absence of any oppositions.	P2200

E. Maxigesic™ IV Patent Fillings
(400 ibu : 1,000 para or 200 ibu : 500 para)

Country	Number	Status	Next Step	File ref
1. Australia	2011274652	Patent granted	Attend to annual maintenance fees from 22 June 2015.	P2261
2. Malaysia	PI 2012005317	Application filed	Review examination results when these are received from the Patent Office (request for examination has been filed). Attend to annual maintenance fees after a patent has been granted.	P2264
3. New Zealand	604009	Under examination	Respond to examiner's objections.	P2262
4. Singapore	201209318-3	Patent granted	Attend to annual maintenance fees from 21 June 2015.	P2263
5. South Africa	2012/08210	Application approved	Awaiting grant of patent (there is no substantive examination step so	P2265

			grant of patent should happen in the near future). Annual maintenance fees payable.	
6. Turkey	2012/15828	Patent granted	Attend to annual maintenance fees, payable by 21 June each year.	P2266

F. Maxigesic™ IV Patent Filings
Ibuprofen/Paracetamol - 150/500 mg & 300/1,000 mg

Country	Number	Status	Next Step	File ref
1. Australia	2011324137	Application filed	Review examiner's report when it issues (a request for examination has been filed). Maintenance fees payable annually from 26 October 2015.	P2306
2. Brazil	11 2013 0108290	Application filed	File request for examination by 26 October 2014, or earlier if preferred. Maintenance fees payable annually from 26 October 2013.	P2307
3. Canada	2814057	Application filed	File request for examination by 26 October 2016, or earlier if preferred. Maintenance fees payable annually from 26 October 2013.	P2308
4. Chile	2013-1250	Application filed	Review examination results when these issue, probably during 2014. Maintenance fees not needed until 6 May 2023.	P2319
5. China	201180052565.9	Application filed	File request for examination by 4 November 2013, or earlier if preferred. Maintenance fees not payable until after the examination stage.	P2326
6. Columbia	13-125952	Application filed	File a request for examination. Maintenance fees not payable until after the examination stage.	P2310
7. EP Community	11838295.1	Application filed	Application awaiting its turn for examination. Maintenance fees payable annually from 26 October 2013.	P2311
8. Indonesia	W00 2013 01836	Application filed	File request for examination by 26 October 2014, or earlier if preferred.	P2312

			Maintenance fees payable not payable until after the grant of patent.	
9. Japan	2013-537631	Application filed	File request for examination by 26 October 2014, or earlier if preferred. Maintenance fees not payable until after the examination stage.	P2313
10. Korea	10-2013-7014178	Application filed	File request for examination by 26 October 2016, or earlier if preferred. Maintenance fees payable not payable until after the examination stage.	P2314
11. Malaysia	PI 2013001237	Application filed	Application awaiting its turn for examination. Maintenance fees not payable until after the examination stage.	P2315
12. Mexico	2013/005113	Application filed	Application yet to be examined.	P2316
13. New Zealand	609727	Under examination.	Respond to examiner's objections. Renewal fees not payable until after the grant of patent.	P2322A
14. Philippines	1/2013/500689	Application filed	Review examination report when it issues. Maintenance fees payable annually from 10 May 2016.	P2317
15. Russia	Not yet known	Application filed	File request for examination by 26 October 2014, or earlier if preferred. Maintenance fees payable not payable until after the examination stage.	P2318
16. Singapore	201302626-5	Application filed	File request for examination by 4 November 2015.	P2319
17. South Africa	2013/02455	Application filed	Patent expected to grant during 2013 – there is no technical examination step in South Africa. Maintenance fees payable annually, from 26 October 2013.	P2320
18. Thailand	1301001941	Application filed	File request for examination by 26 October 2016, or earlier if preferred. Maintenance fees not payable until after the examination stage.	P2321
19. Turkey	2013/05076	Application filed	File request for examination when directed to do so by the Turkish Patent Office. Maintenance fees payable annually, from 26 October 2013.	P2322
20. USA	13/882,953	Application filed	Application waiting for its turn for examination - review examiner's report	P2305


			when it issues. Renewal fees not payable under after grant.	
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G. PE HCl + Paracetamol Patent Filings


Country	Number	Status	Next Step	File ref
1. Australia	2013211546	Accepted/approved by examiner	Attend to annual maintenance fees	P2382
2. New Zealand	613918 617848 (divisional) 617850 (divisional)	Accepted/approved by examiner Accepted/approved by examiner Accepted/approved by examiner	Attend to periodic renewal fees when patent granted	P2272 P2420 P2421
3. PCT International	PCT/NZ2014/000001	Application filed	Yet to be examined	
4. Russia	2013138633	Under examination informally	Awaiting reply from examiner	P2385
5. Taiwan	Not yet known	Application filed	Yet to be examined	
6. United Kingdom	1313835.9	Under examination	Awaiting reply from examiner	P2383
7. United States	13/958,069	Application filed	Yet to be examined	P2384
8. Venezuela	000107-2014	Application filed	Yet to be examined	

H. Borrower Trademarks


Number	Trade Mark	Country	Goods/Services	Status	Renewal due by	Our file reference
NEW ZEALAND						
705940	Lorapaed	New Zealand	pharmaceutical products; antihistamine products; non-sedating antihistamine products	Registered	15/12/2023	T1486

715177	FerroTab; Ferro-Tab	New Zealand	pharmaceuticals, dietary supplements, iron tablets	Registered	13/07/2014	T1547
667948	COCO-Scalp; COCOSCALP; COCO-SCALP; COCO SCALP	New Zealand	pharmaceutical products; coal tar based medicines	Registered	07/11/2019	T1425
732171	Aller-Soothe	New Zealand	pharmaceuticals, antihistamines, sedating antihistamines, treatments for allergic conditions; all of the aforesaid for humans	Registered	05/07/2015	T1628
731171	Maxiclear	New Zealand	pharmaceuticals; decongestants; analgesics; antihistamines; cold, flu, sinus, hay fever, and pain relievers in this class	Registered	15/06/2015	T1623
728064	Gastro-Soothe	New Zealand	pharmaceuticals, medicines for treating stomach ache or pain	Registered	13/04/2015	T1606
727288	CALCI-TAB	New Zealand	pharmaceuticals; medicines for humans; dietary supplements for humans	Registered	24/03/2015	T1600
679926	Maxigesic	New Zealand	pharmaceutical products; analgesic medicines	Registered	27/05/2020	T1452
656956	Zostrix	New Zealand	pharmaceutical preparations and substances (excluding vaccines for human use)	Registered	10/05/2019	T1396
747876		New Zealand	publications on medical or health topics; articles and information segments (printed) on medical or health topics educational services in relation to medical or health topics; educational sessions provided through television or other mass media on medical or health	Registered	12/05/2016	T1739




			topics; infomercials on medical or health topics			
749492	Nausicalm	New Zealand	medicines; medicines for treating nausea; medicines for treating or preventing motion sickness	Registered	13/06/2016	T1759
761675	Peptisoothe	New Zealand	pharmaceuticals; medicines; antacid products; medicines for soothing or preventing stomach pain	Registered	08/01/2017	T1832
769422	Protectoderm	New Zealand	medicated skin treatments; products for protecting the skin from moisture, body secretions or urine	Registered	31/05/2017	T1913
773190	Histaclear	New Zealand	pharmaceuticals; medicines; antihistamine medicine for the treatment of hay fever and allergic conditions	Registered	01/08/2017	T1933
781248	Crystaderm	New Zealand	pharmaceuticals; medicines; topical products for treating skin infections	Registered	13/12/2017	T2007
978693		New Zealand	pharmaceutical preparations, pharmaceutical preparations for topical use, medicines for human use, medicated preparations for the treatment of the skin.	Registered	07/06/2023	T2651
784709		New Zealand	pharmaceuticals; medicines; laxatives; paracetamol; cold treatments; flu treatments	Registered	21/02/2018	T2027
794877	DuoPower	New	pain relief medicaments;	Registered	25/08/2018	T2086

		Zealand	analgesics			
801276	Roxanne	New Zealand	oral contraceptives; birth control pills	Registered	23/12/2018	T2118
806131	ZoRub ; Zo-Rub	New Zealand	pharmaceuticals, treatments for muscle pain, treatments for joint pain	Registered	07/05/2019	T2151
806852		New Zealand	pharmaceuticals; medicines; laxatives; paracetamol; cold treatments; flu treatments	Registered	22/05/2019	T2157
820239	Lax-Sachet	New Zealand	pharmaceuticals; laxatives	Registered	26/02/2020	T2242
834065	Paracetamol Osteo-Tab	New Zealand	pharmaceuticals, pain relief medicines; all of the aforesaid incorporating paracetamol.	Registered – registration being opposed	30/11/2020	T2337
836435	Solu-Pred	New Zealand	pharmaceuticals; steroids.	Registered	28/01/2021	T2355
846342	Maxi-Rub	New Zealand	pharmaceuticals, topical pain reliever medicines.	Registered	25/07/2021	T2417
848342	Femme-Tab	New Zealand	pharmaceuticals, contraceptive preparations, contraceptive tablets.	Registered	29/08/2021	T2421
306937	ORACORT	New Zealand	pharmaceutical preparations and substances	Registered	23/03/2016	L G Berry
306938	VIRABAN	New Zealand	pharmaceutical preparations and substances	Registered	23/03/2016	L G Berry
962353	Fexaclear	New Zealand	pharmaceutical preparations; antihistamines.	Under opposition	N/A	T2528
994741	Zo-Antifungal	New Zealand	pharmaceutical preparations; fungal nail treatment.	Accepted	N/A	T2769
AUSTRALIA						
982648	Lorapaed	Australia	pharmaceutical products;	Registered	15/12/2023	T1487

			antihistamine products; non-sedating antihistamine products			
1010549	FerroTab; Ferro-Tab	Australia	pharmaceuticals, dietary supplements, iron tablets	Registered	13/07/2014	T1547
1018627	COCO-Scalp; COCOSCALP; COCO-SCALP; COCO SCALP	Australia	pharmaceutical products; coal tar based medicines	Registered	02/09/2014	T1553
1063236	Aller-Soothe	Australia	pharmaceuticals, antihistamines, sedating antihistamines, treatments for allergic conditions	Registered	05/07/2015	T1628
1072008	AFT Pharmaceuticals	Australia	pharmaceuticals; medicinal preparations; dietetic substances for medicinal use	Registered	25/08/2015	T1635
1079372	Cromolux	Australia	pharmaceuticals; pharmaceuticals for human use; treatments for allergic conditions; eye drops; eye drops for allergic eye conditions	Registered	07/10/2015	T1648
1060327	Maxiclear	Australia	pharmaceuticals; decongestants; analgesics; antihistamines, cold, flu, sinus, hay fever, and pain relievers in this class	Registered	15/06/2015	T1623
1050517	Gastro-Soothe	Australia	pharmaceuticals, medicines for treating stomach ache or pain	Registered	13/04/2015	T1606
1021990	Lax-Tab	Australia	pharmaceuticals; laxatives	Registered	27/09/2014	T1564
1047881	CALCI-TAB	Australia	pharmaceuticals; medicines for humans; dietary supplements for humans	Registered	24/03/2015	T1600
1241206	Maxigesic	Australia	pharmaceutical products; analgesic medicines	Registered	19/05/2018	T2049

1129907		Australia	<p>publications on medical or health topics; articles and information segments (printed) on medical or health topics</p> <p>educational services in relation to medical or health topics; educational sessions provided through television or other mass media on medical or health topics; infomercials on medical or health topics</p>	Registered	17/08/2016	T1786
1118229	Nausicalm	Australia	<p>medicines; medicines for treating nausea; medicines for treating or preventing motion sickness</p>	Registered	13/06/2016	T1760
1119553	Zacin HP	Australia	<p>pharmaceutical preparations, medicines, capsaicin cream; but excluding products for the treatment or prevention of depression and depressive disorders including lowered mood, early morning wakening, insomnia (inability to sleep) or hypersomnia (excessive sleeping), diminished ability to think or concentrate, or indecisiveness and fatigue or loss of energy as well as monoamine oxidase inhibitors, sleeping tablets and other medications that are sedatives, antipsychotic medications, anti-epileptic medications, sumatriptan, tryptophan, medications used to prevent blood clotting, such as warfarin, flecainide, St John's Wort</p>	Registered	20/06/2016	T1762

1119554	Zacin OA	Australia	pharmaceutical preparations, medicines, capsaicin cream; but excluding products for the treatment or prevention of depression and depressive disorders including lowered mood, early morning wakening, insomnia (inability to sleep) or hypersomnia (excessive sleeping), diminished ability to think or concentrate, or indecisiveness and fatigue or loss of energy as well as monoamine oxidase inhibitors, sleeping tablets and other medications that are sedatives, antipsychotic medications, anti-epileptic medications, sumatriptan, tryptophan, medications used to prevent blood clotting, such as warfarin, flecainide, St John's Wort	Registered	20/06/2016	T1762
1155458	Peptisoothe	Australia	pharmaceuticals; medicines; antacid products; medicines for soothing or preventing stomach pain	Registered	08/01/2017	T1833
1179033	Protectoderm	Australia	medicated skin treatments; products for protecting the skin from moisture, body secretions or urine	Registered	31/05/2017	T1914
1190525	Histaclear	Australia	pharmaceuticals; medicines; antihistamine medicine for the treatment of hay fever and allergic conditions	Registered	01/08/2017	T1934
1215286	Crystaderm	Australia	pharmaceuticals; medicines; topical products for treating	Registered	13/12/2017	T2008

			skin infections			
1561708		Australia	pharmaceutical preparations; pharmaceutical preparations for topical use; medicines for human use; medicated preparations for the treatment of the skin	Registered	07/06/2023	T2652
1258655	DuoPower	Australia	analgesics; pain killers (pharmaceuticals); pain relieving preparations; pain relieving substances	Registered	25/08/2018	T2087
1278749	Roxanne	Australia	oral contraceptives; birth control pills	Registered	23/12/2018	T2117
1298025	ZoRub	Australia	pharmaceuticals, treatments for muscle pain, treatments for joint pain	Registered	07/05/2019	T2152
1225609		Australia	pharmaceuticals; medicines; laxatives; paracetamol; cold treatments; flu treatments	Registered	21/02/2018	T2028
1300458		Australia	pharmaceuticals; medicines; laxatives; paracetamol; cold treatments; flu treatments	Registered	22/05/2019	T2158
1347718	Lax-Sachet	Australia	pharmaceuticals; laxatives	Registered	26/02/2020	T2243
1397141	Paracetamol Osteo-Tab	Australia	pharmaceuticals, pain relief medicines; all of the aforesaid incorporating paracetamol.	Under opposition	N/A	T2338
1405955	Solu-Pred	Australia	pharmaceutical preparations; steroids.	Registered	28/01/2021	T2356
1438596	Maxi-Rub	Australia	pharmaceuticals, topical pain reliever medicines.	Registered	25/07/2021	T2418
1445189	Femme-Tab	Australia	pharmaceuticals, contraceptive preparations, contraceptive tablets.	Registered	29/08/2021	T2430

1164506	Itch-soothe	Australia	dermatological creams (medicated); preparations for application to the skin (pharmaceuticals); pharmaceutical creams; pharmaceutical drugs; pharmaceutical preparations	Registered	06/03/2017	T1870
1503332	Fexaclear	Australia	pharmaceutical preparations; antihistamines.	Registered	19/07/2022	T2529
1613106	Zo-Antifungal	Australia	anti-fungal agents; pharmaceutical preparations	Filed	N/A	T2770
European Union						
00705610 4	Maxigesic	European Community	pharmaceutical products; medicaments for pain relief; analgesic medicines.	Under opposition	N/A	T2064
00706686 3	DuoPower	European Community	medicaments for pain relief; analgesic medicines	Registered	15/07/2018	T2067
TURKEY						
2011/3103 7	Zostrix	Turkey	pharmaceutical preparations and substances; topical osteoarthritis treatment; capsaicin cream for reducing osteoarthritis pain	Registered	14/04/2021	T2179
MEXICO						
1145961	Zostrix	Mexico	pharmaceutical substances and preparations	Registered	08/11/2014	T2347
MALAYSIA						
20120059 50	Acetamax	Malaysia	pharmaceuticals, pain relief medicines; all included in class 5	Registered	12/04/2022	T2531
20110110 07	Maxigesic	Malaysia	Pharmaceuticals; analgesics; medications for pain relief; all included in	Registered		

			class 5			
20110110 06	DuoPower	Malaysia	Pharmaceuticals; analgesics; medications for pain relief; all included in class 5	Registered		
SINGAPORE						
T1205463 F	Acetamax	Singapore	pharmaceuticals, pain relief medicines	Registered	17/04/2022	T2532
T1107694 F	Maxigesic	Singapore	Pharmaceuticals; analgesics; medications for pain relief	Registered		
T1107695 D	DuoPower	Singapore	Pharmaceuticals; analgesics; medications for pain relief	Registered		
HONG KONG						
30221806 8	Acetamax	Hong Kong	pharmaceuticals, pain relief medicines	Registered	10/04/2022	T2533
30263919 7	imatinib-AFT	Hong Kong	pharmaceuticals	Filed	N/A	T2654
30194612 4	Maxigesic	Hong Kong	Pharmaceuticals; analgesics; medications for pain relief	Registered		
30194617 9	DuoPower	Hong Kong	Pharmaceuticals; analgesics; medications for pain relief	Registered		
RUSSIA						
20137427 38	Maxiclear	Russian Federation	pharmaceuticals	Filed	N/A	T2723
20117188 59/ 463385	Maxigesic	Russian Federation	Pharmaceuticals; analgesics; medications for pain relief	Registered		
20117188 58/ 464215	DuoPower	Russian Federation	Pharmaceuticals; analgesics; medications for pain relief	Registered		
JAPAN						

2011-041482 5449298	Maxigesic	Russian Federation	Pharmaceuticals; analgesics; medications for pain relief	Registered		
2011-041484 5449299	DuoPower	Russian Federation	Pharmaceuticals; analgesics; medications for pain relief	Registered		

Schedule 7.05(c)
to Term Loan Agreement

MATERIAL INTELLECTUAL PROPERTY

1. OWNED – REGISTERED

A. Maxigesic™ Patents Relating to Material Intellectual Property Agreements ²

Country	Number	Status	Next Step	File ref
Australia	2005260243	Patent granted	Attend to annual maintenance fees by 7 July each year.	P1652
EP Community countries as below – 1. AT 2. BE 3. BG 4. CH/LI 5. CY 6. CZ 7. DE 8. DK 9. EE 10. ES 11. FI 12. FR 13. GR 14. HU 15. IE 16. IS 17. IT 18. LT 19. LU 20. LV 21. MC				

² 1A patents for Maxigesic relate to Material Agreements. However it is noted that Maxigesic in the EU gets 10 year data protection which is similar to that offered by the EP.

22. NL 23. PL 24. PT 25. RO 26. SE 27. SI 28. SK 29. TR				
New Zealand	552181	Patent granted	Attend to periodic renewal fees, the next of which is due by 7 July 2015.	P1786
Russia	20100147287	Patent granted	Attend to annual renewal fees by 7 July each year.	P1659
Singapore	200608968-4	Patent granted	Attend to annual renewal fees by 7 July each year.	P1654

B. Maxiclear Patents Relating to Material Intellectual Property Agreements

Country	Number	Status	Next Step	File ref
1. Australia	2005333081	Patent granted.	Pay maintenance fees by 17 July each year.	P1867
2. New Zealand	541960	Patent granted.	Pay renewal fees periodically – next fee due by 17 June 2015	P1865
3. Russia	2008100280	Patent granted.	Pay maintenance fees by 17 June each year.	P1872
4. Singapore	201004295	Under examination	Waiting for reply from the examiner.	P1871

C. Maxigesic IV 1000/300 Patents Relating to Material Intellectual Property Agreements

Country	Number	Status	Next Step	File ref
1. Australia	2011324137	Application filed	Review examiner's report when it issues (a request for examination has been filed). Maintenance fees payable annually from 26 October 2015.	P2306
2. EP Community	11838295.1	Application filed	Application awaiting its turn for examination.	P2311

			Maintenance fees payable annually from 26 October 2013.	
3. Malaysia	PI 2013001237	Application filed	Application awaiting its turn for examination. Maintenance fees not payable until after the examination stage.	P2315
4. New Zealand	609727	Under examination.	Respond to examiner's objections. Renewal fees not payable until after the grant of patent.	P2322A
5. Russia	Not yet known	Application filed	File request for examination by 26 October 2014, or earlier if preferred. Maintenance fees payable not payable until after the examination stage.	P2318
6. Singapore	201302626-5	Application filed	File request for examination by 4 November 2015.	P2319

D. PE HCl + Paracetamol Patent Filings Relating to Material Intellectual Property Agreements

Country	Number	Status	Next Step	File ref
1. Australia	2013211546	Accepted/approved by examiner	Attend to annual maintenance fees	P2382
2. New Zealand	613918 617848 (divisional) 617850 (divisional)	Accepted/approved by examiner Accepted/approved by examiner Accepted/approved by examiner	Attend to periodic renewal fees when patent granted	P2272 P2420 P2421
3. PCT International ³	PCT/NZ2014/000001	Application filed	Yet to be examined	

2. OWNED – UNREGISTERED

- Crystaderm
- Ferro C SR Tablets
- Para SR

³ Sales relating to PCT International only relate to filings in Malaysia and Singapore. No other sales are forecast yet relating to other countries that might be filed out of the PCT

3. LICENSED

- Maxigesic IV – An additional formulation patent has been drafted and will be filed. Borrower will have rights to this patent as per AFT-Everbright NV agreement for Maxigesic IV. Such license will be exclusive to both parties.
- Licensed IP: SURF⁴

Field	Class	AFT-SURF Agreement	Patent #	Status	Countries	App to AFT Device
1	Mesh nebuliser	Exclusive Defined	AU2006251850	Granted	AU	Yes
			EP2021131	Granted	EU: DE,ES,FR,GB,IT	Yes
			US2009200397	Exam	USA	Yes
2	HDA Technology	Exclusive Defined	AU2003254386	Granted	AU	Is the tubular energy transmitter [not employed in AFT device]
		Exclusive Defined	EP1545359	Granted (2013)	EU: DE,ES,FR,GB,IT	Is the tubular energy transmitter [not employed in AFT device]
		Exclusive Defined	US8001962	Granted (2012)	USA	Is the tubular energy transmitter [not employed in AFT device]
3	Sterilisation	Non-exclusive	AU753817	Granted	AU	No as not a sterilisation apparatus, maybe use some run-dry claims
		Non-exclusive	EP1071479	Granted	EU: CH,GB,IT,DE,ES,SE	No as not a sterilisation apparatus, maybe

⁴ Borrower has rights to the SURF patents either exclusively in defined fields or non-exclusively. Upon development of the device it is now apparent that only patent #1 is required for the current development. Borrower is still to decide whether patent #4 has any utility to its development program. Borrower will discontinue use of patents under #2 & #3 and notify SURF on 31 March 2014 or thereafter so as not to incur further costs. It will also notify SURF that for #4, Borrower will have to agree to additional jurisdictions before agreeing to pay any ongoing or additional patent costs.

This patent is the only patent required to grant protection to the SURF Nebuliser

						use some run-dry claims
		Non-exclusive	US6379616	Granted	USA	No as not a sterilisation apparatus, maybe use some run-dry claims
4	Synergetic Drug Delivery Device	In agreement non-exclusive	AU2006252145 EP2455032 EU:DE,ES,FR,GB,IT US8,671935	Granted Granted Granted	AU EP USA	Significantly enhances drug diffusion

**Schedule 7.06
to Term Loan Agreement**

CERTAIN LITIGATION

None.

**Schedule 7.08
to Term Loan Agreement**

TAXES

None.

Schedule 7.12
to Term Loan Agreement

INFORMATION REGARDING SUBSIDIARIES

Subsidiary	Jurisdiction of Organization	Direct Equity Holder	Percentage of Subsidiary held by Direct Equity Holder
AFT Orphan	New Zealand	Borrower	65%
AFT AUS	Australia	Borrower	100%
AFT Pharmaceuticals Singapore PTE. LTD.	Singapore	Borrower	100%
AFT Pharmaceuticals (SE Asia) SND. BHD.	Malaysia	Borrower	100%

Schedule 7.13(a)
to Term Loan Agreement

EXISTING INDEBTEDNESS OF BORROWER AND ITS SUBSIDIARIES

1. The following Indebtedness owing to The Bank of New Zealand (the “**BNZ Facility**”):
 - a. Until the initial Borrowing Date and application of the proceeds thereof:
 - i. Up to NZ\$2,971,869 of indebtedness of Borrower and AFT AUS under that certain Housing Term Loan, dated November 21, 2012, between Borrower, as Borrower and AFT AUS and the H&M Atkinson Family Trust as guarantors, and the Bank of New Zealand as lender.
 - ii. Up to NZ\$5,000,000 of indebtedness of Borrower and AFT AUS under that certain Loan Facility – Customized Average Rate Loan, dated November 21, 2012, between Borrower, as borrower, AFT AUS and the H&M Atkinson Family Trust, as guarantors, and the Bank of New Zealand, as lender.
 - iii. Up to NZ\$8,000,000 of indebtedness of Borrower and AFT AUS under that certain Multi-Currency Multi-Option Facility Agreement, dated December 14, 2012, between Borrower as borrower, AFT AUS and the H&M Atkinson Family Trust as guarantors, and the Bank of New Zealand, as lender.
 - iv. Up to NZ\$1,500,000 of letters of credit issued for the benefit of Borrower by the Bank of New Zealand (the “**Standby Letter of Credit Facility**”).
 - v. Up to NZ\$75,000 of indebtedness of Borrower under that certain Business Visa Facility, dated November 21, 2012, between Borrower as borrower, AFT AUS and the H&M Atkinson Family Trust as guarantors, and the Bank of New Zealand, as lender (the “**Business Visa Facility**”).
 - vi. Up to NZ\$141,000 of indebtedness of Borrower under that certain Asset Finance Agreement, dated September 22, 2011, between Borrower, as borrower, Hartley Campbell Atkinson, as guarantor, and the Bank of New Zealand, as lender (the “**Asset Finance Facility**”). As of the date hereof, approximately NZ\$18,689 is outstanding under the Asset Finance Facility.
 - vii. Up to NZ\$5,000,000 of Indebtedness of Borrower in respect of interest rate swaps pursuant to that certain Master Agreement for Derivative Transactions, dated February 5, 2013, between Borrower and the Bank of New Zealand.
 - viii. Up to NZ\$4,800,000 of Indebtedness of Borrower in respect of currency swaps pursuant to that certain Master Agreement for Foreign Currency Transactions, dated May 12, 2011, between Borrower and the Bank of

New Zealand (the “*Foreign Exchange Cover*”).

- ix. Up to \$50,000 of Indebtedness of Borrower in respect of Historical Rate Roll-overs pursuant to that certain Foreign Exchange Transactions – Historical Rate Roll-overs letter dated 24 April 2014 from Bank of New Zealand and Borrower (the “*Historical Rate Roll-over Facility*”).
 - x. The guaranty by Borrower and AFT AUS of up to NZ\$372,131 of Indebtedness of the H&M Atkinson Family Trust under that certain Housing Term Loan, dated November 21, 2012, among the H&M Atkinson Family Trust as borrower, Borrower, AFT AUS and the H&M Atkinson Family Trust, as guarantors, and the Bank of New Zealand.
- b. From the initial Borrowing Date:
- i. The Standby Letter of Credit Facility.
 - ii. The Business Visa Facility.
 - iii. The Asset Finance Facility.
 - iv. Up to NZ\$6,000,000 of Indebtedness of Borrower under the Foreign Exchange Cover.
 - v. The Historical Rate Roll-over Facility.
 - vi. Up to NZ\$1,000,000 of Indebtedness of Borrower under an overdraft facility with the Bank of New Zealand.
2. Up to NZ \$100,000 of indebtedness of Borrower in respect of that certain Bank Guarantee – Lease, dated November 21, 2012, issued by the Bank of New Zealand in favor of DNZ Property Fund Limited regarding Borrower’s office headquarters located at Level 1, 129 Hurstmere Road, Takapuna, Auckland 0622 New Zealand.

Schedule 7.13(b)
to Term Loan Agreement

LIENS GRANTED BY THE OBLIGORS

1. Liens, securing Indebtedness under the BNZ Facility (as defined in **Schedule 7.13(a)**), on all assets of Borrower and AFT AUS, arising pursuant to:
 - a. General Security Agreement, dated May 27, 2011, by and between Borrower and the Bank of New Zealand;
 - b. First Registered Fixed and Floating Charge, dated June 3, 2011, between AFT AUS and the Bank of New Zealand;
 - c. Interlocking Guarantee, dated May 27, 2011, by and among Borrower, AFT AUS, the H&M Atkinson Family Trust and the Bank of New Zealand;
 - d. Asset Finance Agreement, dated September 22, 2011, between Borrower and the Bank of New Zealand relating to that certain 2011 Lexus LX570 5.7P Wagon 6A Station Wagon (NZ Registration Number: GBP349; VIN: JTJHY00W304071019); and
 - e. Mortgage, dated May 27, 2011, between H&M Atkinson Family Trust and the Bank of New Zealand.
2. NZ\$100,000 cash deposit securing the Indebtedness described in item 2 of **Schedule 7.13(a)**.
3. Liens described in **Section 9.02(e)**.
4. Liens granted by Borrower in favor of Orix New Zealand Limited, on collateral consisting of motor vehicles, to secure Indebtedness of Borrower under (i) Operating Lease on Mazda CX5, Registration HEH341 (Start date Dec 11 13; End date Sep 10 17; Monthly payment NZ\$614.50) and (ii) Operating Lease on Mazda CX5, Registration HEH380 (Start date Jan 17 14; End date Oct 16 17; Monthly payment NZ\$614.50).
5. Liens granted by Borrower in favor of BMW Financial Services New Zealand Limited, on collateral consisting of motor vehicles, to secure Indebtedness of Borrower under (i) Finance Lease on Hyundai IX35, Registration GWF500 (Start date Jun 26 13; End date Mar 26 17; Credit amount NZ\$36k; Monthly payment NZ\$656.74) and (ii) Finance Lease on Hyundai IX35, Registration GWF507 (Start date Jun 26 13; End date Mar 26 17; Credit amount NZ\$36k; Monthly payment NZ\$656.74).
6. Liens granted by Borrower in favor of Pharmacy Retailing (NZ) Limited (trading as Healthcare Logistics), on collateral consisting of goods purchased by Borrower from the secured party, to secure the purchase price for such products (2013 purchases equaled approximately NZ\$533,500.94).

7. Liens granted by Borrower in favor of FleetPartners NZ, on collateral consisting of motor vehicles, to secure Indebtedness of Borrower under (i) Operating Lease on Dodge Nitro, Registration FWL621 (End date Sep 30 14) and (ii) Operating Lease on Dodge Journey, Registration FYE956 (End date May 12 14).
8. Liens granted by Borrower in favor of Rapid Labels Limited, on collateral consisting of labels and stickers purchased by Borrower from the secured party, to secure the purchase price for such products (approximately NZ\$435 is outstanding as of the date hereof; 2013 purchases equaled approximately NZ\$13,900).
9. Liens granted by Borrower in favor of Konica Minolta Business Solutions New Zealand Limited, on collateral consisting of three copy/print machines purchased by Borrower from the secured party, to secure Indebtedness of Borrower under a lease thereof (End date in Feb '18; Monthly rental \$3,764.29).

Schedule 7.14
to Term Loan Agreement

MATERIAL AGREEMENTS OF OBLIGORS

1. BNZ Facility (as defined in **Schedule 7.13(a)**).
2. Exclusive License Agreement, dated April 1, 2012, between Borrower and SURF Pty Ltd.
3. License Agreement, dated December 30, 2012, between Borrower and PharmaSwiss SA.
4. Development, License and Supply Agreement, dated October 18, 2012, between Borrower and ACTAVIS Group PTC ehf.
5. License, Supply and Marketing Agreement, dated April 1, 2012, between Borrower and Adamed Sp. Z o.o.
6. License Agreement, dated September, 16, 2013, between Borrower and Aziende Chimiche Riunite Angelini Francesco – A.C.R.A.F. S.p.A.
7. Distributorship Agreement, dated March 2, 2005 between Borrower and Claris Lifesciences Limited.
8. Supply Agreement between, dated June 22, 2010, between Borrower and Edge Pharmaceuticals Limited.
9. Development Collaboration Agreement, dated May 22, 2012, between Borrower and Everbright Pharmaceuticals s.a.r.l.
10. Agreement, dated May 22, 2012, between Borrower, Neogen Developments NV and Everbright Pharmaceuticals s.a.r.l. and
11. Agreement, dated December 27, 2006, between Borrower and Farmprojects, S.A.
12. Manufacturing Transfer Agreement, dated March 27, 2010, as amended on June 13, 2011, between Borrower and Macleods Pharmaceuticals Limited.
13. Proprietary Information License Agreement, dated April 22, 2008, between Borrower and Macleods Pharmaceuticals Limited.
14. License and Distribution Agreement, dated October 30, 2003, between Borrower and Pinewood Healthcare.
15. Qilu Agreement – Qilu Pharmaceuticals Co Ltd dated Sep 25 2013
16. Sigma Agreement – Sigma Laboratories Ltd dated Oct 17 2004

To the best of our knowledge none of the above agreements require any material modification to

be in full force and effect

**Schedule 7.15
to Term Loan Agreement**

RESTRICTIVE AGREEMENTS

1. BNZ Facility (as defined in **Schedule 7.13(a)**).
2. Any statutory restrictions on distributions.

Schedule 7.16
to Term Loan Agreement

REAL PROPERTY OWNED OR LEASED BY BORROWER OR ANY SUBSIDIARY

1. Leased office located at Level 1, 129 Hurstmere Road, Takapuna, Auckland 0622 New Zealand.
2. Leased office located at Level 1, 296 Burns Bay Rd, Lane Cove, SYDNEY NSW 2066 Australia.
3. Leased office located at Lot 3.02A Level 3, Menara BRDB Bangsar, 285 Jalan Maarof, Bukit Bandaraya, Bangsar 5900, Kuala Lumpur, Malaysia.

**Schedule 9.05
to Term Loan Agreement**

EXISTING INVESTMENTS

Borrower's 65% ownership interest in AFT Orphan.

Schedule 9.10
to Term Loan Agreement

TRANSACTIONS WITH AFFILIATES

Guarantees and Indebtedness under the BNZ Facility (as defined in **Schedule 7.13**).

Schedule 9.14
to Term Loan Agreement

PERMITTED SALES AND LEASEBACKS

None.

Exhibit A
to Term Loan Agreement

FORM OF GUARANTEE ASSUMPTION AGREEMENT

GUARANTEE ASSUMPTION AGREEMENT dated as of [DATE] by [NAME OF ADDITIONAL SUBSIDIARY GUARANTOR], a _____ [corporation][limited liability company] (the “***Additional Subsidiary Guarantor***”), in favor of Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P., as Lenders (the “***Lenders***”) under that certain Term Loan Agreement, dated as of April 30, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the “***Loan Agreement***”), among AFT Pharmaceuticals Limited, a New Zealand company (“***Borrower***”), the lenders party thereto and the Subsidiary Guarantors party thereto.

Pursuant to **Section 8.12(a)** of the Loan Agreement, the Additional Subsidiary Guarantor hereby agrees to become a “Subsidiary Guarantor” for all purposes of the Loan Agreement, and a “Grantor” for all purposes of the Security Agreement. Without limiting the foregoing, the Additional Subsidiary Guarantor hereby, jointly and severally with the other Subsidiary Guarantors, guarantees to the Lenders and its successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of all Guaranteed Obligations (as defined in **Section 13.01** of the Loan Agreement) in the same manner and to the same extent as is provided in **Section 13** of the Loan Agreement. In addition, as of the date hereof, the Additional Subsidiary Guarantor hereby makes the representations and warranties set forth in **Sections 7.01, 7.02, 7.03, 7.05(a), 7.06, 7.07, 7.08** and **7.18** of the Loan Agreement, and in **Section 2** of the Security Agreement, with respect to itself and its obligations under this Agreement, the other Loan Documents and the CPS Documents, as if each reference in such Sections to the Loan Documents included reference to this Agreement, such representations and warranties to be made as of the date hereof.

The Additional Subsidiary Guarantor hereby instructs its counsel to deliver the opinions referred to in **Section 8.12(a)** of the Loan Agreement to the Lenders.

IN WITNESS WHEREOF, the Additional Subsidiary Guarantor has caused this Guarantee Assumption Agreement to be duly executed and delivered as of the day and year first above written.

[ADDITIONAL SUBSIDIARY GUARANTOR]

By _____
Name:
Title:

**Exhibit B
to Term Loan Agreement**

FORM OF NOTICE OF BORROWING

Date : [_____]

To: Capital Royalty Partners II L.P. and the other Lenders
1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel

Re: Borrowing under Term Loan Agreement

Ladies and Gentlemen:

The undersigned, AFT Pharmaceuticals Limited, a New Zealand company ("**Borrower**"), refers to the Term Loan Agreement, dated as of April 30, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), among Borrower, Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund "A" L.P., and other parties from time to time party thereto as lenders ("**Lenders**"), and the subsidiary guarantors from time to time party thereto. The terms defined in the Loan Agreement are herein used as therein defined.

Borrower hereby gives you notice irrevocably, pursuant to **Section 2.02** of the Loan Agreement, of the borrowing of the Loan specified herein:

1. The proposed Borrowing Date is [_____].
2. The amount of the proposed Borrowing is \$[_____].
3. The payment instructions with respect to the funds to be made available to Borrower are as follows:

Bank name: [_____]
Bank Address: [_____]
Routing Number: [_____]
Account Number: [_____]
Swift Code: [_____]

Borrower hereby certifies that the following statements are true on the date hereof, and will be true on the date of the proposed borrowing of the Loan, before and after giving effect thereto and to the application of the proceeds therefrom:

- a) the representations and warranties made by Borrower in **Section 7** of the Loan Agreement shall be true on and as of the Borrowing Date and immediately after giving effect to the application of the proceeds of the Borrowing with the same force and effect as if made on

and as of such date except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date;

b) on and as of the Borrowing Date, there shall have occurred no Material Adverse Change since [_____]; and

c) no Default exists or would result from such proposed borrowing.

IN WITNESS WHEREOF, Borrower has caused this Notice of Borrowing to be duly executed and delivered as of the day and year first above written.

BORROWER:

AFT PHARMACEUTICALS LIMITED

By _____

Name:

Title:

**Exhibit C-1
to Term Loan Agreement**

FORM OF TERM LOAN NOTE

U.S. \$[_____]

[DATE]

FOR VALUE RECEIVED, the undersigned, AFT Pharmaceuticals Limited, a New Zealand company (“**Borrower**”), hereby promises to pay to [Capital Royalty Partners II L.P.][Capital Royalty Partners II – Parallel Fund “A” L.P.] or its assigns (the “**Lender**”) at the Lender’s principal office in [_____], in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all Loans made by the Lender pursuant to **Section 2.01** of the Term Loan Agreement, dated as of April 30, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the “**Loan Agreement**”), among Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 2.04** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT; PLEASE CONTACT [NAME OF CFO OR TAX DIRECTOR OF ISSUER], [TITLE], [ADDRESS], TELEPHONE: [TEL #] TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT AND THE YIELD TO MATURITY.

Borrower hereby waives demand, presentment, protest or notice of any kind hereunder, other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

AFT PHARMACEUTICALS LIMITED

By _____

Name:

Title:

**Exhibit C-2
to Term Loan Agreement**

FORM OF PIK LOAN NOTE

U.S. \$[_____]

[DATE]

FOR VALUE RECEIVED, the undersigned, AFT Pharmaceuticals Limited (“**Borrower**”), hereby promises to pay to [Capital Royalty Partners II L.P.][Capital Royalty Partners II – Parallel Fund “A” L.P.] or its assigns (the “**Lender**”) at the Lender’s principal office in [_____], in immediately available funds, the aggregate principal sum set forth above, or, if less, the aggregate unpaid principal amount of all PIK Loans made by the Lender pursuant to **Section 3.02(d)** of the Term Loan Agreement, dated as of April 30, 2014 (as amended, restated, supplemented or otherwise modified, renewed, refinanced or replaced, the “**Loan Agreement**”), among Borrower, the Lender, the other lenders party thereto and the Subsidiary Guarantors party thereto, on the date or dates specified in the Loan Agreement, together with interest on the principal amount of such PIK Loans from time to time outstanding thereunder at the rates, and payable in the manner and on the dates, specified in the Loan Agreement.

This Note is a Note issued pursuant to the terms of **Section 3.02(d)** of the Loan Agreement, and this Note and the holder hereof are entitled to all the benefits and security provided for thereby or referred to therein, to which Loan Agreement reference is hereby made for a statement thereof. All defined terms used in this Note, except terms otherwise defined herein, shall have the same meaning as in the Loan Agreement.

The Lender may supplement this Note by attaching to this Note a schedule (the “**Note Schedule**”) to evidence additional PIK Loans made by the Lender to Borrower following the date first above written. The Lender may endorse thereon the date such additional PIK Loan is made and the principal amount of such additional PIK Loan when made. Such Note Schedule shall form part of this Note and all references to this Note shall mean this Note, as supplemented by such Note Schedule.

THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION; *PROVIDED THAT* SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW SHALL APPLY.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, AND THE RULES AND REGULATIONS THEREUNDER, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT; PLEASE CONTACT [NAME OF CFO OR TAX DIRECTOR OF ISSUER], [TITLE], [ADDRESS], TELEPHONE: [TEL #] TO OBTAIN INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT AND THE YIELD TO MATURITY.

Borrower hereby waives demand, presentment, protest or notice of any kind hereunder,

other than notices provided for in the Loan Documents. The non-exercise by the holder hereof of any of its rights hereunder in any particular instance shall not constitute a waiver thereof in such particular or any subsequent instance.

THIS NOTE MAY NOT BE TRANSFERRED EXCEPT IN COMPLIANCE WITH THE TERMS OF THE LOAN AGREEMENT.

AFT PHARMACEUTICALS LIMITED

By _____

Name:

Title:

PIK NOTE SCHEDULE

This Note Schedule supplements that certain Note issued by Borrower to [Capital Royalty Partners II L.P.][Capital Royalty Partners II – Parallel Fund “A” L.P.]⁵ or its assigns on [DATE].

[illegible]

⁵ Delete as appropriate for each Note.

⁶ Insert name of party making notation (e.g. Borrower or Lender).

Exhibit D
to Term Loan Agreement

FORM OF U.S. TAX COMPLIANCE CERTIFICATE

Reference is made to the Term Loan Agreement, dated as of April 30, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), among AFT Pharmaceuticals Limited, a New Zealand company (“**Borrower**”), Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P., and other parties from time to time party thereto as lenders (“**Lenders**”), and the subsidiary guarantors from time to time party thereto. [_____] (the “**Foreign Lender**”) is providing this certificate pursuant to **Section 5.03(e)(ii)(B)** of the Loan Agreement. The Foreign Lender hereby represents and warrants that:

1. The Foreign Lender is the sole record owner of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;
2. The Foreign Lender’s direct or indirect partners/members are the sole beneficial owners of the Loans as well as any obligations evidenced by any Note(s) in respect of which it is providing this certificate;
3. Neither the Foreign Lender nor its direct or indirect partners/members is a “bank” for purposes of Section 881(c)(3)(A) of the Internal Revenue Code of 1986, as amended (the “**Code**”). In this regard, the Foreign Lender further represents and warrants that:
 - (a) neither the Foreign Lender nor its direct or indirect partners/members is subject to regulatory or other legal requirements as a bank in any jurisdiction; and
 - (b) neither the Foreign Lender nor its direct or indirect partners/members has been treated as a bank for purposes of any tax, securities law or other filing or submission made to any Governmental Authority, any application made to a rating agency or qualification for any exemption from tax, securities law or other legal requirements;
3. Neither the Foreign Lender nor its direct or indirect partners/members is a 10-percent shareholder of Borrower within the meaning of Section 881(c)(3)(B) of the Code; and
4. Neither the Foreign Lender nor its direct or indirect partners/members is a controlled foreign corporation receiving interest from a related person within the meaning of Section 881(c)(3)(C) of the Code.

[Signature follows]

IN WITNESS WHEREOF, the undersigned has caused this certificate to be duly executed and delivered as of the date indicated below.

[NAME OF NON-U.S. LENDER]

By _____

Name:

Title:

Date: _____

Exhibit E
to Term Loan Agreement

FORM OF COMPLIANCE CERTIFICATE

[DATE]

This certificate is delivered pursuant to **Section 8.01(d)** of, and in connection with the consummation of the transactions contemplated in, the Term Loan Agreement, dated as of April 30, 2014 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “**Loan Agreement**”), among AFT Pharmaceuticals Limited, a New Zealand company (“**Borrower**”), Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P., and other parties from time to time party thereto as lenders (“**Lenders**”), and the subsidiary guarantors from time to time party thereto. Capitalized terms used herein and not otherwise defined herein are used herein as defined in the Loan Agreement.

The undersigned, a duly authorized Responsible Officer of Borrower having the name and title set forth below under his signature, hereby certifies, on behalf of Borrower for the benefit of the Secured Parties and pursuant to **Section 8.01(d)** of the Loan Agreement that such Responsible Officer of Borrower is familiar with the Loan Agreement and that, in accordance with each of the following sections of the Loan Agreement, each of the following is true on the date hereof, both before and after giving effect to any Loan to be made on or before the date hereof:

In accordance with Section **8.01[(a)/(b)]** of the Loan Agreement, attached hereto as **Annex A** are the financial statements for the [fiscal quarter/fiscal year] ended [_____] required to be delivered pursuant to **Section 8.01[(a)/(b)]** of the Loan Agreement. Such financial statements fairly present in all material respects the consolidated financial position, results of operations and cash flow of Borrower and its Subsidiaries as at the dates indicated therein and for the periods indicated therein in accordance with GAAP [(subject to the absence of footnote disclosure and normal year-end audit adjustments)]⁷ [without qualification as to the scope of the audit or as to going concern and without any other similar qualification together with the certificate from Borrower’s independent auditors with respect to such financial statements required to be delivered pursuant to **Section 8.01(c)** of the Loan Agreement. The examination by such auditors in connection with such financial statements has been made in accordance with the standards of the United States’ Public Company accounting Oversight Board (or any successor entity).]⁸

Attached hereto as **Annex B** are the calculations used to determine compliance with each financial covenant contained in **Section 10** of the Loan Agreement.

No Default or Event of Default is continuing as of the date hereof[, except as provided for on **Annex C** attached hereto, with respect to each of which Borrower proposes to take the actions set forth on **Annex C**].

⁷ Insert language in brackets only for quarterly certifications.

⁸ Insert language in brackets only for annual certifications.

IN WITNESS WHEREOF, the undersigned has executed this certificate on the date first written above.

AFT PHARMACEUTICALS LIMITED

By _____
Name:
Title:

Annex A to Compliance Certificate

FINANCIAL STATEMENTS

[see attached]

Annex B to Compliance Certificate

CALCULATIONS OF FINANCIAL COVENANT COMPLIANCE

I.	Section 10.01: Minimum Liquidity	
A.	As of the last Business Day of the month, the amount of unencumbered cash and Permitted Cash Equivalent Investments (which for greater certainty shall not include any undrawn credit lines), in each case, to the extent held in an account over which the Lenders have a first priority perfected security interest:	\$_____
B.	The greater of:	\$_____
	(1) NZ\$4,000,000 and	
	(2) to the extent Borrower has incurred Permitted Priority Debt, the minimum cash balance required of Borrower by Borrower's Permitted Priority Debt creditors	
	<i>Is Line I.A equal to or greater than Line I.B?:</i>	<i>Yes: In compliance; No: Not in compliance</i>
C.	Amount of unencumbered cash held in an account over which the Lenders have a first priority perfected security interest:	\$_____
	<i>Is Line I.C equal to or greater than NZ\$1,000,000?:</i>	<i>Yes: In compliance; No: Not in compliance</i>
II.	Section 10.02(a)-(c): Minimum Revenue—Subsequent Periods	
A.	Revenues during the twelve month period ending on March 31, 2014:	\$_____
	<i>[Is line II.A equal to or greater than NZ\$47,500,000?</i>	<i>Yes: In compliance; No: Not in compliance]⁹</i>
B.	Revenues during the twelve month period ending on March 31, 2015:	\$_____
	<i>[Is line II.B equal to or greater than NZ\$60,000,000?</i>	<i>Yes: In compliance; No: Not in compliance]¹⁰</i>
C.	Revenues during the twelve month period ending on March 31, 2016:	\$_____

⁹ Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2014 pursuant to Section 8.01(b) of the Loan Agreement.

¹⁰ Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2015 pursuant to Section 8.01(b) of the Loan Agreement.

	<i>[Is line II.C equal to or greater than NZ\$70,000,000?</i>	<i>Yes: In compliance; No: Not in compliance]¹¹</i>
D.	Revenues during the twelve month period ending on March 31, 2017:	\$_____
	<i>[Is line II.D equal to or greater than NZ\$80,000,000?</i>	<i>Yes: In compliance; No: Not in compliance]¹²</i>
E.	Revenues during the twelve month period ending on March 31, 2018:	\$_____
	<i>[Is line II.E equal to or greater than NZ\$90,000,000?</i>	<i>Yes: In compliance; No: Not in compliance]¹³</i>
F.	Revenues during the twelve month period ending on March 31, 2019:	\$_____
	<i>[Is line II.F equal to or greater than NZ\$100,000,000?</i>	<i>Yes: In compliance; No: Not in compliance]¹⁴</i>

¹¹ Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2016 pursuant to Section 8.01(b) of the Loan Agreement.

¹² Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2017 pursuant to Section 8.01(b) of the Loan Agreement.

¹³ Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2018 pursuant to Section 8.01(b) of the Loan Agreement.

¹⁴ Include bracketed entry only on the Compliance Certificate to be delivered within 120 days of the end of 2019 pursuant to Section 8.01(b) of the Loan Agreement.

Exhibit F
to Term Loan Agreement

FORM OF SUBORDINATION AGREEMENT

This Subordination Agreement is made as of [_____] (this “**Agreement**”) among Capital Royalty Partners II L.P., a Delaware limited partnership (“**CRII**”), and Capital Royalty Partners II – Parallel Fund “A” L.P., a Delaware limited partnership (“**CRPPFA**” and, collectively with CRII, CRPPFA and their successors and assigns, the “**Senior Lenders**”), and [_____] a [_____] [corporation] (“**Subordinated Creditor**”).

RECITALS:

A. AFT Pharmaceuticals Limited, a New Zealand company (“**Borrower**”), will, as of the date hereof, issue in favor of Subordinated Creditor the Subordinated Note (as defined below).

B. Senior Lenders and Borrower have entered into the Senior Loan Agreement (as defined below) and the Senior Security Agreement (as defined below) under which Borrower has granted a security interest in the Collateral (as defined below) in favor of Senior Lenders as security for the payment of Borrower’s obligations under the Senior Loan Agreement.

C. To induce Senior Lenders to make and maintain the credit extensions to Borrower under the Senior Loan Agreement, Subordinated Creditor is willing to subordinate the Subordinated Debt (as defined below) to the Senior Debt (as defined below) on the terms and conditions herein set forth.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions. As used herein, the following terms have the following meanings:

“**Collateral**” has the meaning set forth in the Senior Security Agreement.

“**Enforcement Action**” means, with respect to any indebtedness, obligation (contingent or otherwise) or Collateral at any time held by any lender or noteholder, (i) commencing, by judicial or non-judicial means, the enforcement with respect to such indebtedness, obligation or Collateral of any of the default remedies available under any of the applicable agreements or documents of such Senior Lender or noteholder, the UCC or other applicable law (other than the mere issuance of a notice of default), (ii) repossessing, selling, leasing or otherwise disposing of all or any part of such Collateral, or exercising account debtor or obligor notification or collection rights with respect to all or any portion thereof, or attempting or agreeing to do so, or (iii) appropriating, setting off or applying to such lender or noteholder’s claim any part or all of such Collateral or other property in the possession of, or coming into the possession of, such lender or noteholder or its agent, trustee or bailee.

“**Insolvency Event**” means that Borrower shall have applied for, consented to or acquiesced in the appointment of a trustee, receiver or other custodian for it or any of its property, or made a general assignment for the benefit of creditors and, in the absence of such

application, consented or acquiesced, permitted or suffer to exist the appointment of a trustee, receiver or other custodian for it or for a substantial part of its property, and such trustee, receiver or other custodian shall not have been discharged within sixty days; or permitted or suffered to exist the commencement of any bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect of it, and if any such case or proceeding was not commenced by it, such case or proceeding shall have been consented to or acquiesced in by it or shall have resulted in the entry of an order for relief or shall have remained for sixty (60) days undismissed.

“Senior Debt” means the Obligations (as defined in the Senior Loan Agreement).

“Senior Discharge Date” has the meaning set forth in **Section 3**.

“Senior Loan Agreement” means that certain Term Loan Agreement, dated as of April 30, 2014, by and among Borrower and the Senior Lenders, as amended, restated, supplemented or otherwise modified from time to time, but without giving effect to any amendment and/or restatement, supplement, renewal or other modification prohibited by this Agreement.

“Senior Loan Documents” means, collectively, the Loan Documents (as defined in the Senior Loan Agreement), in each case as amended, restated, supplemented or otherwise modified from time to time, but without giving effect to any amendment and/or restatement, supplement, renewal or other modification prohibited by this Agreement.

“Senior Security Agreement” means that certain Security Agreement, dated as of [_____], 2014, among Borrower, AFT Orphan Pharmaceuticals Limited, a New Zealand company, and the Secured Parties (as defined therein), as amended, restated, supplemented or otherwise modified from time to time, but without giving effect to any amendment and/or restatement, supplement, renewal or other modification prohibited by this Agreement.

“Subordinated Debt Documents” means, collectively, the Subordinated Note and all loan documents relating thereto and any security documents under which a lien is granted to secure the Subordinated Debt, as amended, restated, supplemented or otherwise modified from time to time, but without giving effect to any amendment and/or restatement, supplement, renewal or other modification prohibited by this Agreement.

“Subordinated Debt” means and includes all obligations, liabilities and indebtedness of Borrower owed to Subordinated Creditor, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, including without limitation, principal, premium (if any), interest, fees, charges, expenses, costs, professional fees and expenses, and reimbursement obligations.

“Subordinated Note” means that certain \$[_____] subordinated promissory note, dated [_____], issued by Borrower to Subordinated Creditor, as amended, restated, supplemented or otherwise modified from time to time, but without giving effect to any amendment and/or restatement, supplement, renewal or other modification prohibited by this Agreement.

“**UCC**” means the Uniform Commercial Code of any applicable jurisdiction and, if the applicable jurisdiction shall not have any Uniform Commercial Code, the Uniform Commercial Code as in effect in the State of New York.

2. Liens. Subordinated Creditor represents and warrants that ¹⁵[the Subordinated Debt is unsecured. Subordinated Creditor agrees that it will not request or accept any security interest in any Collateral to secure the Subordinated Debt] [all liens and security interests, if any, that secure the Subordinated Debt, are hereby subordinated to the liens and security interests securing the Senior Debt, regardless of the time, manner or order of perfection of any such liens and security interests].

3. Payment Subordination. (a) Until all of the Senior Debt (other than contingent indemnification or reimbursement obligations for which no claim has been made or other obligations which, by their terms, survive termination of the Senior Loan Documents) is indefeasibly paid in full in cash and all commitments of Senior Lenders under the Senior Loan Documents have been terminated (such date, the “**Senior Discharge Date**”), (a) all payments in respect of the Subordinated Debt are subordinated in right and time of payment to all payments in respect of the Senior Debt, and (b) Subordinated Creditor will not demand or receive from Borrower (and Borrower will not pay) any part of the Subordinated Debt, whether by payment, prepayment, or otherwise, or accelerate the Subordinated Debt.

(b) Subordinated Creditor must deliver to Senior Lenders in the form received (except for endorsement or assignment by Subordinated Creditor) any payment, distribution, security or proceeds it receives on the Subordinated Debt other than according to this Agreement.

4. Subordination of Remedies. Until the Senior Discharge Date, Subordinated Creditor will not accelerate the maturity of all or any portion of the Subordinated Debt, exercise any remedy with respect to the Collateral, or take any other Enforcement Action with respect to the Subordinated Debt.

5. Insolvency Proceedings. These provisions remain in full force and effect, despite an Insolvency Event, and Senior Lenders’ claims against Borrower and Borrower’s estate will be fully paid before any payment is made to Subordinated Creditor.

6. Release of Liens. In the event of any private or public sale or other disposition, by or with the consent of Senior Lenders, of all or any portion of the Collateral, Subordinated Creditor agrees that such sale or disposition shall be free and clear of any liens Subordinated Creditor may have on such Collateral. Subordinated Creditor agrees that, in connection with any such sale or other disposition, (i) Senior Lenders are authorized to file any and all UCC and other applicable lien releases and/or terminations in respect of any liens held by Subordinated Creditor in connection with such a sale or other disposition, and (ii) it shall execute any and all lien releases or other documents reasonably requested by Senior Lenders in connection therewith. In furtherance of the foregoing, Subordinated Creditor hereby appoints Senior Lenders as its attorney-in-fact, with full authority in the place and stead of Subordinated Creditor and full

¹⁵ Select one, as appropriate.

power of substitution and in the name of Subordinated Creditor or otherwise, to execute and deliver any document or instrument which Subordinated Creditor is required to deliver pursuant to this **Section 6**, such appointment being coupled with an interest and irrevocable. Subordinated Creditor agrees that Senior Lenders may release or refrain from enforcing its security interest in any Collateral, or permit the use or consumption of such Collateral by Borrower free of any Subordinated Creditor security interest, without incurring any liability to Subordinated Creditor.

7. Attorney-In-Fact. Until the Senior Discharge Date, Subordinated Creditor irrevocably appoints Senior Lenders as its attorney-in-fact, with power of attorney with power of substitution, in Subordinated Creditor's name or in Senior Lenders' name, for Senior Lenders' use and benefit without notice to Subordinated Creditor, to do the following in any bankruptcy, insolvency or similar proceeding involving Borrower:

(a) file any claims for the Subordinated Debt on behalf of Subordinated Creditor if Subordinated Creditor does not do so at least 30 days before the time to file claims expires, and

(b) accept or reject any plan of reorganization or arrangement for Subordinated Creditor and vote Subordinated Creditor's claims in respect of the Subordinated Debt in any way it chooses.

Such power of attorney is irrevocable and coupled with an interest.

8. Legend; Amendment of Debt. (a) Subordinated Creditor will immediately put a legend on the Subordinated Note that the Subordinated Note is subject to this Agreement.

(b) No amendment of the Subordinated Debt documents will modify this Agreement in any way that terminates or impairs the subordination of the Subordinated Debt or the subordination of any security interest or lien that Senior Lenders have in Borrower's property. No amendment, modification or waiver of any provision of the Subordinated Debt Documents (including any refinancing thereof) shall be made without first obtaining the consent of Senior Lenders, if the effect thereof is to: (i) increase the interest rate on the Subordinated Debt or change (to earlier dates) the dates upon which principal, interest and other sums are due under the Subordinated Note; (ii) alter the redemption, prepayment or subordination provisions thereof; (iii) impose on Borrower or any guarantor of the Subordinated Debt any new or additional prepayment charges, premiums, reimbursement obligations, reimbursable costs or expenses, fees or other payment obligations; (iv) alter the representations, warranties, covenants, events of default, remedies and other provisions in a manner which would make such provisions materially more onerous, restrictive or burdensome to Borrower or any guarantor of the Subordinated Debt; or (v) otherwise increase the obligations of Borrower or any guarantor of the Subordinated Debt in respect of the Subordinated Debt or confer additional rights upon Subordinated Creditor, which individually or in the aggregate would be materially adverse to Borrower or any guarantor of the Subordinated Debt or Senior Lenders.

(c) At any time without notice to Subordinated Creditor, Senior Lenders may take such action with respect to the Senior Debt as Senior Lenders, in their sole discretion, may deem appropriate, including, without limitation, terminating advances, increasing the principal,

extending the time of payment, increasing interest rates, renewing, compromising or otherwise amending any documents affecting the Senior Debt and any Collateral securing the Senior Debt, and enforcing or failing to enforce any rights against Borrower or any other person. No action or inaction will impair or otherwise affect Senior Lenders' rights under this Agreement.

9. Representations and Warranties. Subordinated Creditor represents and warrants to Senior Lenders that:

(a) all action on the part of Subordinated Creditor, its officers, directors, partners, members and shareholders, as applicable, necessary for the authorization of this Agreement and the performance of all obligations of Subordinated Creditor hereunder has been taken;

(b) this Agreement constitutes the legal, valid and binding obligation of Subordinated Creditor, enforceable against Subordinated Creditor in accordance with its terms;

(c) the execution, delivery and performance of and compliance with this Agreement by Subordinated Creditor will not (i) result in any material violation or default of any term of any of Subordinated Creditor's charter, formation or other organizational documents (such as Articles or Certificate of Incorporation, bylaws, partnership agreement, operating agreement, etc.) or (ii) violate any material applicable law, rule or regulation.

10. Term; Reinstatement. This Agreement shall remain effective until the Senior Discharge Date. If, after the Senior Discharge Date, Senior Lenders must disgorge any payments made on the Senior Debt for any reason (including, without limitation, the bankruptcy of Borrower), this Agreement and the relative rights and priorities provided in it, will be reinstated as to all disgorged payments as though the payments had not been made, and Subordinated Creditor will immediately pay Senior Lenders all payments received under the Subordinated Debt to the extent the payments or retention thereof would have been prohibited under this Agreement.

11. Successors and Assigns. This Agreement binds Subordinated Creditor, its successors or assigns, and benefits Senior Lenders' successors or assigns. This Agreement is for Subordinated Creditor's and Senior Lenders' benefit and not for the benefit of Borrower or any other party. Subordinated Creditor shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Debt or any related document or any interest in any Collateral therefor unless prior to the consummation of any such action, the transferee thereof shall execute and deliver to Senior Lenders an agreement of such transferee to be bound hereby, or an agreement substantially identical to this Agreement providing for the continued subjection of the Subordinated Debt, the interests of the transferee in the Collateral and the remedies of the transferee with respect thereto as provided herein with respect to Subordinated Creditor and for the continued effectiveness of all of the other rights of Senior Lenders arising under this Agreement, in each case in form satisfactory to Senior Lenders.

12. Further Assurances. Subordinated Creditor hereby agrees to execute such documents and/or take such further action as Senior Lenders may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement, including, without

limitation, ratifications and confirmations of this Agreement from time to time hereafter, as and when requested by Senior Lenders.

13. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14. Governing Law; Waiver of Jury Trial. (a) This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

(b) EACH PARTY HERETO WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

15. Entire Agreement. This Agreement represents the entire agreement with respect to the subject matter hereof, and supersedes all prior negotiations, agreements and commitments. Senior Lenders and Subordinated Creditor are not relying on any representations by the other creditor party or Borrower in entering into this Agreement, and each of Senior Lenders and Subordinated Creditor has kept and will continue to keep itself fully apprised of the financial and other condition of Borrower. This Agreement may be amended only by written instrument signed by Senior Lenders and Subordinated Creditor.

16. Legal Fees. In the event of any legal action to enforce the rights of a party under this Agreement, the party prevailing in such action shall be entitled, in addition to such other relief as may be granted, all reasonable costs and expenses, including reasonable attorneys' fees, incurred in such action.

17. Severability. Any provision of this Agreement which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

18. Notices. All notices, demands, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing and shall be delivered or sent by first-class mail, postage prepaid, or by overnight courier or messenger service or by facsimile or electronic mail, message confirmed, and shall be deemed to be effective for purposes of this Agreement on the day that delivery is made or refused. Unless otherwise specified in a notice mailed or delivered in accordance with the foregoing sentence, notices, demands, instructions and other communications in writing shall be given to or made upon the respective parties hereto at their respective addresses and facsimile numbers indicated on the signature pages hereto.

[Signature pages follow]

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

SUBORDINATED CREDITOR:

[_____]

By _____

Name:

Title:

Address for Notices:

SENIOR LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP

L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II

GP LLC, its General Partner

By _____

Name: Charles Tate

Title: Sole Member

Address for Notices:

1000 Main Street, Suite 2500

Houston, TX 77002

Attn: General Counsel

Tel.: 713.209.7350

Fax: 713.209.7351

Email: adorenbaum@capitalroyalty.com

**CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” L.P.**

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP L.P., its General
Partner

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP LLC, its
General Partner

By _____
Name: Charles Tate
Title: Sole Member

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com

Acknowledged and Agreed to:

AFT PHARMACEUTICALS LIMITED

By _____
Hartley Atkinson
Managing Director

Address for Notices:
Level 1, 129 Hurstmere Road
Takapuna, Auckland 0622
New Zealand
Attn: Dr. H. Atkinson
Tel.: +64-9-4880232
Fax: +64-9-4880234
Email: hartley@aftpharm.com

Exhibit G
to Term Loan Agreement

FORM OF SECURITY AGREEMENT



General Security Agreement

AFT Pharmaceuticals Limited (Borrower)

The companies listed in Schedule 1

Capital Royalty Partners II L.P. and
Capital Royalty Partners II – Parallel Fund "A" L.P.



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GENERAL SECURITY AGREEMENT

Date:

PARTIES

AFT Pharmaceuticals Limited (*Borrower*)

The companies listed in Schedule 1

Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P.

THE PARTIES AGREE as follows:

1 INTERPRETATION

1.1 Definitions

In this document, unless the context requires otherwise:

Attorney means a Person appointed under this document as an attorney of an Obligor, and includes any agent or delegate of such a Person.

Collateral Security means each security (other than the security created under this document) granted at any time by an Obligor or any other Person at the express or implied request of an Obligor in favour of the Secured Parties (whether alone or with any other Person) to secure payment of any or all of the Secured Money or performance of any or all of the Secured Obligations.

Control Agent has the meaning given to such term in *clause 21.1(a)*.

Event of Default has the meaning given to such term in the Term Loan Agreement.

Investigator means a Person appointed under this document to act as an investigator of an Obligor.

Investment Securities means:

- (a) the investment securities described in Schedule 4; and
- (b) all other investment securities which at any time are included in the Secured Property (including any which are after-acquired property).

Issuer means an issuer of any Investment Securities or Related Rights.

NZ GAAP means generally accepted accounting practice as defined in section 3 of the Financial Reporting Act 1993 of New Zealand

Exhibit G-5



NZ\$ and \$ means New Zealand dollars.

Obligors means each of:

- (a) the Borrower;
- (b) the Persons listed in Schedule 1; and
- (c) such other Persons which become party to this document by executing a supplemental deed in (or substantially in) the form contained in Schedule 2 or in such other form as the Secured Parties may approve,

but excluding any such Person which has been released by the Secured Parties from its obligations under this document (and *Obligor* refers separately to each of them).

PLA means the Property Law Act 2007 of New Zealand.

PPSA means the Personal Property Securities Act 1999 of New Zealand.

Priority Amount means US\$40,000,000 plus interest.

Receiver means a Person appointed under this document as receiver, or as a receiver and manager.

Receivership Act means the Receivership Act 1993 of New Zealand.

Related Rights means:

- (a) distributions;
- (b) options or rights to take up any securities (as defined in the Securities Act) of any nature; and
- (c) all other rights, money or securities (as defined in the Securities Act) of any nature,

(including any which are after-acquired property) attributable to, or arising from, any Investment Securities, and all of an Obligor's present and future rights and interest in the above.

Secured Money means:

- (a) in relation to an Obligor, all Indebtedness of that Obligor to the Secured Parties (whether alone or with any other Person and in any capacity) under or in connection with any Loan Document (and includes future advances and any amounts contemplated by section 87 of the PLA); and
- (b) when used without reference to a particular Obligor, all such Indebtedness of the Obligors,



and a reference to Secured Money includes any part of it.

Secured Obligations means:

- (a) in relation to an Obligor, all present and future obligations which that Obligor (whether alone or with any other Person and in any capacity) has or owes to the Secured Parties (whether alone or with any other Person and in any capacity) under or in connection with any Loan Document, other than obligations to pay or deliver money; and
- (b) when used without reference to a particular Obligor, all such obligations of the Obligors.

Secured Parties means:

- (a) Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P.;
- (b) each person who becomes a Secured Party at any time in accordance with this document; and
- (c) includes, as the context may require or permit, any Secured Parties Representative appointed in accordance with *clause 9.1(c)* as a representative of the Secured Parties for the purposes of this document.

Secured Property means:

- (a) in relation to an Obligor:
 - (i) all of that Obligor’s present and future assets (including any personal property in respect of which that Obligor has an interest as a buyer or lessee, or which that Obligor receives as a commercial consignment); and
 - (ii) the investment securities described in Schedule 4;
 - (iii) all Related Rights; and
 - (iv) all of that Obligor’s present and future rights and interest in any asset, and includes any part of it; and
- (b) when used without reference to a particular Obligor, all such assets, rights and interests of the Obligors.

Securities Act means the Securities Act 1978 of New Zealand.

Term Loan Agreement means the term loan agreement dated on [date] 2014 between, *inter alios*, the Borrower as borrower, AFT Orphan Pharmaceuticals Limited as subsidiary



guarantor and Capital Royalty Partners II L.P. and Capital Royalty Partners II – Parallel Fund “A” L.P. as lenders.

Transaction Documents means:

- (a) this document;
- (b) the Term Loan Agreement and each other Loan Document;
- (c) each other Collateral Security;
- (d) each other agreement between an Obligor and the Secured Parties (whether or not other Persons are parties to it) which relates to any Secured Money or Secured Obligations; and
- (e) each other document which the Borrower and the Secured Parties agree is a Transaction Document for the purposes of this document.

US\$ means United States dollars.

1.2 **Term Loan Agreement definitions incorporated**

Any capitalised term not defined herein shall have the meaning given to such term in the Term Loan Agreement.

1.3 **References**

In this document, unless the context requires otherwise, any reference to:

agreement includes a contract, deed, or legally enforceable arrangement, whether present or future, and whether or not in writing.

asset includes any present or future, real or personal, tangible or intangible asset, benefit, interest, property, revenue, right or undertaking, and includes uncalled capital and called but unpaid capital.

authorisation includes any consent, authorisation, registration, filing, permit, order, recording, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Authority.

borrowed money includes money borrowed or raised (whether or not for cash consideration) by any means (including the drawing, acceptance, endorsement or discounting of bills of exchange) and the deferred purchase price of assets and services (except for assets and services obtained in the ordinary course of business on normal trade terms) and includes any Indebtedness under any finance leases.

disposal includes any sale, assignment, exchange, transfer, loan, lease, surrender of lease, licence or parting with possession of, or the granting of any option, right or interest, or any agreement for any of the foregoing (but excludes any such transaction which is a



security, though this exclusion does not extend to a transaction which is a Permitted Lien), and *dispose*, *acquisition* and *acquire* are to be construed accordingly.

distribution has the meaning given to it in section 2 of the Companies Act.

dissolution includes:

- (a) the bankruptcy or liquidation of any Person;
- (b) the removal of a company from the register under the Companies Act;
- (c) any amalgamation under the Companies Act; and
- (d) any equivalent or analogous procedure under the law of any jurisdiction.

expenses includes all expenses, losses, claims, costs (including legal costs on a solicitor and own client basis), disbursements, taxes, travel expenses, out of pocket expenses, and audit, investigative or administrative costs.

guarantee includes an indemnity, letter of credit, suretyship and any other agreement the economic effect of which is to assume responsibility for the Indebtedness, other obligations, or solvency or financial condition, of a Person.

right includes any right, power, remedy, authority or discretion.

security includes:

- (a) any mortgage, charge, encumbrance, lien, pledge, finance lease, sale (or lease) and lease-back, sale and repurchase, assignment by way of security, title retention arrangement or similar interest imposed by statute, or other arrangement of any nature having similar economic effect to any of the foregoing; and
- (b) any present or future right or interest in personal property that is a security interest for the purposes of the PPSA.

subsidiary of a Person includes:

- (a) a subsidiary as defined in section 5 of the Companies Act;
- (b) a Subsidiary; and
- (c) an "in-substance" subsidiary and any other Person treated as a subsidiary under NZ GAAP.

tax includes any present or future tax, levy, impost, duty, rate, charge, fee, deduction or withholding of any nature, imposed or levied by any Governmental Authority, together with any interest, penalty, charge, fee or other amount imposed or made on, or in respect of, any of the foregoing, and *taxes* and *taxation* are to be construed accordingly.



written and *in writing* include all means of reproducing words in a tangible and permanently visible form including by facsimile transmission.

a reference to any accounting term or expression shall, unless otherwise defined herein, be a reference to such term or expression as it is generally interpreted in accordance with NZ GAAP.

1.4 **PPSA terms incorporated**

In this document, unless the context requires otherwise, the following words and expressions (and grammatical variations of them) have the same meanings as are given to them in the PPSA: *accession, account debtor, account receivable, advance, aircraft, after-acquired property, at risk, attach, chattel paper, equipment, financing statement, future advance, goods, intangible, inventory, investment security, land, lease for a term of more than 1 year, motor vehicle, negotiable instrument, personal property, proceeds, purchase money security interest, purchase price, security interest, serial numbered goods, transfer, value and verification statement.*

1.5 **Construction**

In this document, unless the context requires otherwise:

- (a) *Headings*: headings are for convenience only, and do not affect interpretation;
- (b) *Singular and plural*: the singular includes the plural and the converse;
- (c) *Particular party or Person*: a reference to a particular party or Person includes that party's or Person's executors, administrators, successors, substitutes and assigns;
- (d) *Agreement or document*: a reference to an *agreement* or a *document* is to the agreement or document as amended, novated, supplemented or replaced from time to time;
- (e) *Legislation*: a reference to legislation or to a provision of legislation includes any amendments and re-enactments of it, a legislative provision substituted for it and a statutory regulation, rule, order or instrument made under or issued pursuant to it;
- (f) *Time to time*: anything which may be done at any time may also be done from time to time; and
- (g) *Including*: a reference to *including, for example* or *such as*, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

2 **COVENANT TO PAY AND PERFORM**

2.1 **Secured Money**

Each Obligor agrees that it will pay the Secured Money to the Secured Parties on the terms and at the times stipulated in the other Transaction Documents (or to the extent that there is no such stipulation, upon demand).



2.2 **Secured Obligations**

Each Obligor agrees that it will perform or procure performance of the Secured Obligations in accordance with the Transaction Documents.

3 **ADDITIONAL OBLIGORS**

3.1 **Supplemental Deed**

If at any time a subsidiary of the Borrower which is not an Obligor is required to become an Obligor under this document pursuant to Section 8.12 of the Term Loan Agreement, then the Borrower will procure that such subsidiary becomes an Obligor within 10 Business Days (or sooner, if practicable) after it first meets this test by executing a supplemental deed in (or substantially in) the form set out in Schedule 2.

3.2 **Effective Time**

As from the date of the supplemental deed, the relevant Person shall be an Obligor under this document.

3.3 **Further Assurances**

The Borrower agrees that, immediately following execution of any such supplemental deed, it will:

- (a) deliver to the Secured Parties an original of that supplemental deed as duly completed and executed; and
- (b) if requested by a Secured Party, provide to the Secured Parties a legal opinion (from legal counsel approved by the Secured Parties acting reasonably) confirming the due execution of such supplemental deed, and the validity and enforceability of the obligations of the relevant Obligor under such supplemental deed and this document.

4 **GRANT OF SECURITY**

4.1 **Security interest, charge and agreement to mortgage**

To secure to the Secured Parties payment of its Secured Money and performance of its Secured Obligations, each Obligor:

- (a) grants to the Secured Parties a charge in and over its Secured Property; and
- (b) in addition to the security granted under paragraph (a), assigns by way of security to the Secured Parties all its Secured Property which constitutes present or future rights or choses in action.

The security granted by an Obligor under this clause includes a security interest taken in all that Obligor's present and after-acquired property.

4.2 **Nature of charge in relation to non-personal property**

The charge created under this document is a fixed charge. However, if that charge is not legally and fully effective as a fixed charge then, for so long as and to the extent it may



not be so legally and fully effective, that charge is a floating charge in relation to the Secured Property concerned. Any floating charge created under this document in relation to Secured Property will become a fixed charge:

- (a) automatically, without the need for any notice or action by the Secured Parties, immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with the occurrence of any Event of Default; or
- (b) upon notice from the Secured Parties to the Obligor concerned if, in the opinion of a Secured Party formed on reasonable grounds after consultation with the Borrower (where practicable), the Secured Property of that Obligor is or might be or become seized or taken, subject to any security other than a Permitted Lien, or otherwise in jeopardy (provided that if so stipulated in the notice, that notice will operate to fix the charge only in respect of such Secured Property as is specified in the notice).

4.3 Further Assurances

Each Obligor agrees that it will, at its own cost, promptly do all things that the Secured Parties may require in order:

- (a) to perfect that Obligor's title to, or other right or interest in, all or any part of the Secured Property;
- (b) to maintain, perfect, or otherwise give full effect to the security intended to be created under this document, and the priority of that security, including:
 - (i) the making and maintaining of all registrations (including any registration of the Secured Parties or any nominee as the holder of any Investment Securities and Related Rights);
 - (ii) depositing certificates (or other documents or evidence of title) and executed transfers in relation to the Secured Property with the Secured Parties; and
 - (iii) ensuring that the interest of the Secured Parties is recorded in the records maintained by or on behalf of any Issuer, clearing house or securities depositary;
- (c) to secure more satisfactorily to the Secured Parties payment of the Secured Money and performance of the Secured Obligations (including the granting of further specific security required by the Secured Parties and depositing with the Secured Parties documents or evidence of title and transfers in relation to investment securities);
- (d) to facilitate the exercise of any right by the Secured Parties or any Receiver or Attorney at any time;
- (e) to facilitate the realisation of the Secured Property following the occurrence of an Event of Default and while that Event of Default is continuing; and



- (f) otherwise to enable the Secured Parties to obtain the full benefit of this document.

4.4 **Voting rights in respect of Investment Securities**

Subject to the terms of any other Transaction Document, until an Event of Default occurs:

- (a) an Obligor may exercise all voting rights in relation to any Investment Securities and Related Rights in respect of which it is registered as the holder; and
- (b) if any Secured Party or any nominee is registered as the holder of any Investment Securities or Related Rights, the Secured Party will, if requested by the relevant Obligor and at such Obligor's expense, appoint, or cause the nominee to appoint, a proxy nominated by such Obligor, to enable such Obligor to vote at meetings of the relevant Issuer.

However, in each case, the relevant Obligor will not at any time cast, or refrain from casting, a vote in a manner which could reasonably be expected to adversely affect the value of the Secured Property or the security created under this document.

4.5 **Entitlements in respect of Investment Securities**

- (a) Any Obligor which holds Investment Securities must notify the Secured Creditor promptly of any Related Rights.
- (b) If those Related Rights constitute any option or right to acquire any securities (as defined in the Securities Act) or other property (entitlement) the relevant Obligor must notify the Secured Parties promptly:
 - (i) whether or not it intends to take up or all or part of that entitlement; and
 - (ii) to the extent it does not intend to take up that entitlement, whether or not it intends to transfer that entitlement.

The Secured Parties may request (acting reasonably after consultation with the Borrower, where practicable) the relevant Obligor to (and if so requested such Obligor must, if entitled to do so) take up or transfer all or part of an entitlement in order to preserve the value of the security created under this document. Any securities or property acquired on exercise of an entitlement will form part of the Secured Property.

4.6 **Priority of security interest**

Except to the extent otherwise expressly agreed in writing by the Secured Parties, the security created under this document is intended to be first ranking in priority (subject only to any Permitted Lien).

4.7 **No agreement or consent to subordination or attachment**

Except to the extent otherwise expressly agreed in writing by the Secured Parties, nothing in this document may be construed as an agreement or consent by the Secured Parties to:

- (a) subordinate the security created under this document in favour of any Person; or



- (b) defer or postpone the date of attachment of the security created under this document.

4.8 **Section 92 Property Law Act 2007**

For the purposes only of section 92 of the PLA and in relation to any Secured Property that is not personal property to which the PPSA applies, the maximum amount up to which the Secured Money will rank in priority to any subsequent security is the Priority Amount.

5 **OBLIGATIONS GENERALLY**

5.1 **Security continuing and independent**

This document, and each guarantee under it and each security created under it, is:

- (a) a continuing guarantee and security and operates despite any intermediate payment, settlement of account, exercise of rights or other matter or circumstance;
- (b) in addition to and enforceable independently of any other security, guarantee or Collateral Security; and
- (c) to remain in full force and effect (whether or not at any given time any Obligor is Indebted to the Secured Parties) until the execution by the Secured Parties of an unconditional release of this document.

5.2 **Release**

The Secured Parties are not obliged to execute a release of this document or release any Secured Property from the security created under it, unless:

- (a) all Secured Money has been finally repaid and the Secured Parties are under no obligation to make available any further credit, advance or accommodation which, if provided, would give rise to Secured Money;
- (b) all Secured Obligations have been finally performed and the Secured Parties are under no obligation to do any thing which would give rise to Secured Obligations.

The Secured Parties are not however required to execute a release of this document if the Secured Parties form the opinion, based on reasonable grounds and after consultation with the Borrower (where practicable), that an amount, property, or benefit received or recovered by the Secured Parties in respect of the Secured Moneys or Secured Obligations will or is likely to be avoided by, or be required to be refunded or repaid under, or be required to be accounted for under, an applicable law (including any law relating to preferences or insolvency) and the Secured Parties identify the specific amount, property or benefit involved, and the specific provision of law which is relevant.



6 PAYMENTS

6.1 Appropriation

Without limiting *clause 11.1 (Order of application)*, the Secured Parties, in their absolute discretion, may appropriate any amount received or recovered by the Secured Parties from any Obligor or any other Person as it deems fit, including:

- (a) in or towards payment of other Indebtedness of the payer to the Secured Parties, in preference to applying that amount in reduction of the Secured Money (even if any Obligor is prejudiced as a result); and
- (b) so as to enable the Secured Parties to preserve any purchase money security interest).

The Secured Parties' rights under this clause apply notwithstanding any contrary appropriation by any Obligor or any other Person.

6.2 Currency indemnity

If, for any reason, all or any part of the Secured Money is due in one currency (*first currency*) but paid, recovered or received in another currency, or is required to be converted to another currency for the purpose of making any claim, or obtaining or enforcing any judgment (*second currency*) then:

- (a) the Secured Parties may convert the second currency to the first currency at the time and in the manner it thinks fit; and
- (b) each Obligor will indemnify and hold harmless the Secured Parties on demand against any shortfall or loss resulting from any currency conversion, including the costs of conversion and any premium.

6.3 Reinstatement of void payment

If any payment received or recovered, or amount applied, by a Secured Party, a Receiver, or any Attorney in respect of any Secured Money is avoided by, or is required to be refunded or repaid under, or is required to be accounted for under, any applicable law (including any law relating to preferences or insolvency), then (even if the Secured Parties have executed a release pursuant to this document):

- (a) that payment or application will be deemed not to have discharged or affected the liability or obligation in respect of which that payment or application was received or made; and
- (b) the Secured Parties and each Obligor will, to the maximum extent permitted by law, be deemed to be returned to the position in which each would have been, and will be entitled to exercise all the rights which each would have had, if that payment had not been received or recovered or that amount had not been applied.



7 REPRESENTATIONS AND WARRANTIES

7.1 General representations and warranties

Each Obligor makes, as of the date of this document, each of the representations and warranties applicable to it set out in Section 7 of the Term Loan Agreement to the Secured Parties as if each such representation and warranty (including any related definitions, clauses and schedules) was set out in full herein and as if each reference therein to "this Agreement" includes (where the context permits) a reference to this document.

7.2 Representations and warranties relating to Secured Property

Each Obligor represents and warrants to the Secured Parties that, except to the extent otherwise expressly agreed in writing by the Secured Parties:

- (a) *Existing Secured Property:* in respect of all its Secured Property existing as at the date of this document:
 - (i) it has good title to, and is the sole legal and beneficial owner of, that Secured Property (subject always to the interest of any owner or lessor of any personal property in respect of which that Obligor has an interest as a buyer or lessee or which that Obligor receives as a commercial consignment, and subject also to the interest of the secured party under any Permitted Lien);
 - (ii) no security exists over or affects any of that Secured Property, other than a Permitted Lien;
 - (iii) it has not entered into any agreement to give or permit to exist a security over or affecting that Secured Property, other than a Permitted Lien;
 - (iv) all Investment Securities which constitute that Secured Property are fully paid; and
 - (v) it is lawfully entitled to create, in favour of the Secured Parties, security in that Secured Property;
- (b) *No foreign property:* at the date of this document, all its tangible and registered intangible Secured Property, other than:
 - (i) inventory held in Malaysia for the purposes of sale in Malaysia;
 - (ii) inventory held in Singapore for the purposes of sale in Singapore;
 - (iii) inventory held in Australia for the purposes of sale in Australia; and
 - (iv) inventory in transit to New Zealand, Malaysia, Singapore or Australia, is situated in New Zealand; and



- (c) *Serial-numbered goods*: the information in Schedule 5 (*Serial numbered goods*), if any, is true and correct and includes the details of all the Obligor's serial-numbered goods (if any) that are not inventory.

7.3 Repetition of representations and warranties

Each of the representations and warranties made by an Obligor in:

- (a) *Generally*: this *clause 7* (including any terms of the Term Loan Agreement incorporated in this *clause 7* by reference) will be deemed to be repeated on the first day of each calendar month during the term of this document, by reference to the facts and circumstances then existing; and
- (b) *After-acquired property*: *clauses 7.2(a)(i) to 7.2(a)(v) (Representations and warranties relating to Secured Property)* will be deemed to be made in respect of any Secured Property (including after-acquired property) which comes into existence, or in which that Obligor acquires rights or an interest, after the date of this document, at the time that Secured Property comes into existence or that Obligor acquires rights or an interest in it.

8 UNDERTAKINGS

8.1 General undertakings

Each Obligor agrees to comply with all undertakings and other provisions applicable to it under the Term Loan Agreement, including (without limitation) pursuant to Sections 8 and 9 thereof, as if such undertaking and provision (including any related definitions, clauses and schedules) was set out in full herein and as if each reference therein to "this Agreement" includes (where the context permits) a reference to this document.

8.2 Information undertakings

Each Obligor agrees that, except to the extent otherwise expressly agreed in writing by the Secured Parties, it:

- (a) *Notify Default*: will notify the Secured Parties of any Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence;
- (b) *Notify changes relating to Secured Property*: will notify the Secured Parties promptly (which, in the case of any matter which is not an act or omission of an Obligor, will be construed as prompt upon such Obligor becoming aware):
 - (i) if any personal property which is not Secured Property and which is subject to a security interest which has attached becomes an accession to any Secured Property;
 - (ii) if any Secured Property becomes an accession or a fixture to an asset which is not Secured Property;
 - (iii) if any Secured Property is located outside New Zealand, other than in the ordinary course of trading by an Obligor;



- (iv) upon request by a Secured Party, of the present location of any Secured Property;
- (v) if it acquires any personal property to which the PPSA does not apply;
- (vi) if it acquires, or enters into an agreement to acquire, any Investment Securities or chattel paper;
- (vii) if it acquires any serial numbered goods (including motor vehicles or aircraft) which are not inventory; and
- (viii) of details of any serial numbered goods (including motor vehicles or aircraft) which cease to be inventory of that Obligor;
- (c) *Notify location:* will notify the Secured Parties promptly if any Issuer, or the records of any clearing house or securities depository through which Investment Securities are traded or settled, is located outside New Zealand;
- (d) *Name change:* will notify the Secured Parties in advance of any change of its name (including any name by which it is known or under which it trades);
- (e) *Constitution change:* will notify the Secured Parties in advance of any change (or proposed change) to its constitution that would have an effect on the Secured Property, the Secured Parties or the rights of the Secured Parties under this document;
- (f) *Provide information:* will provide to the Secured Parties promptly such further information regarding the financial condition, business and operations of the Obligor as any Secured Party reasonably requests;
- (g) *Notices:* will promptly inform the Secured Parties when it receives any notice relating to matters that could have a material adverse effect on the value of the Secured Parties' security (including without limitation, pursuant to the Building Act 2004 of New Zealand, the Resource Management Act 1991 of New Zealand and the PLA);
- (h) *Preferential Claims:* provide details of any Indebtedness that could reasonably be expected to constitute a preferential claim as referred to in the Seventh Schedule of the Companies Act, Section 30 of the Receiverships Act or section 153 of the PLA, to the extent that a Secured Party reasonably requests those details;
- (i) *Information to be True:* will ensure that all information provided by it to the Secured Parties in connection with any Transaction Document after the date of this document is true and accurate in all material respects as at the date when that information is provided and will not omit to state any fact or circumstance which would make that information untrue, inaccurate or misleading in any material respect.



8.3 Undertakings relating to capital

Without limiting its obligations under *clause 8.1*, each Obligor agrees that, except to the extent otherwise expressly agreed in writing by the Secured Parties, it will not:

- (a) acquire any of its own shares (other than any acquisition by the Borrower of Series A Preferred Shares (as defined in the constitution of the Borrower) in accordance with their terms or unless it is required to do so by law);
- (b) redeem any of its own shares which are redeemable at its option;
- (c) give any financial assistance, directly or indirectly, for the purpose of, or in connection with, the purchase of shares issued or to be issued by it or any Person which is its holding company; or
- (d) cancel or reduce any shareholder liability to it in respect of any shareholder's shares in it (or consent to, or enter into, any agreement which would have that effect),

and the Secured Parties agree that they will not unreasonably withhold their agreement under this *clause 8.3* to any acquisition by the Borrower of Shares (as defined in the constitution of the Borrower) in accordance with paragraph 3.3(b) of the Third Schedule to the constitution of the Borrower.

8.4 Undertakings relating to Secured Property

Without limiting its obligations under *clause 8.1*, each Obligor agrees that, except to the extent otherwise expressly agreed in writing by the Secured Parties, it:

- (a) *Certificates*: will promptly deposit with the Secured Parties:
 - (i) all certificates or other documents of title in respect of the Secured Property; and
 - (ii) executed transfers in relation to all Investment Securities;
- (b) *No set-off*: will not allow any of its accounts receivable or chattel paper to be subject to any right of set-off, netting or combination of accounts, or other defence or claim in favour of the account debtor, except for rights that arise:
 - (i) solely by operation of any rule of law (but not if created or arising as a result of any non-performance or default); or
 - (ii) under any netting or set off arrangement entered into by that Obligor in the ordinary course of its transactional banking arrangements for the purpose of netting debit and credit balances; or
 - (iii) in favour of account debtors who are customers of such Obligor, in the ordinary course of its business and consistent with its practice prior to the date of this document.



- (c) *Maintain and repair Secured Property:* will keep and maintain the Secured Property in a good state of repair and in good working order and condition, ordinary wear and tear excepted, and take reasonable actions to protect it from loss or damage, and will remedy any defects in the repair, order or condition of that Secured Property;
- (d) *Accessions and fixtures:* will not allow any Secured Property to become an accession or a fixture to any asset that is not Secured Property, except in the ordinary course of that Obligor's normal business;
- (e) *Location of Secured Property:* will not move (or allow to be moved) any Secured Property outside New Zealand, except in the ordinary course of that Obligor's normal business;
- (f) *No prejudice to Secured Property:* will not do (or omit to do) anything which might reasonably be expected to:
 - (i) result in the Secured Property, any right or interest of that Obligor in the Secured Property, or any security created under this document, being or becoming invalid, unenforceable, liable to forfeiture or cancellation; or
 - (ii) otherwise adversely affect the security created under this document;
- (g) *Access:* will ensure that the Secured Parties, on giving reasonable notice, have full access at all reasonable times to inspect the Secured Property; and
- (h) *Proceeds of disposal:* will, if directed in writing by the Secured Parties to do so, pay into an account nominated by the Secured Parties the , proceeds of any disposal of any Secured Property otherwise than in the ordinary course of business, if those proceeds are not applied in payment of the Secured Money.

8.5 Insurance undertakings

Each Obligor agrees that, except to the extent otherwise expressly agreed in writing by the Secured Parties, it:

- (a) *Obligation to insure:* will insure and keep insured such of its Secured Property as it is prudent to insure, against such risks as should be prudently insured against (having regard to the availability of cover, cost and other relevant factors), in each case for full replacement value and in accordance with prudent commercial practice;
- (b) *Third party liability:* will take out and maintain all other proper insurance against third party liability which it is prudent to insure against in accordance with customary and prudent commercial practice;
- (c) *Reputable insurers and brokers:* will take out and maintain all insurance with reputable insurers and through reputable brokers;



- (d) *Pay premiums:* will duly and punctually pay all premiums necessary to maintain all insurance;
- (e) *Secured Parties:* will, at the Secured Parties' request, ensure that each insurance policy provides that at the Secured Parties' election, the Secured Parties are either named as co-insured for their interest or has its interest noted on the policy.
- (f) *Application of insurance proceeds:* will ensure that all moneys recoverable under any insurance in respect of the Secured Property are applied in or towards replacement or reinstatement of the Secured Property or, if replacement or reinstatement is not economically viable and the Secured Parties so require, in or towards payment of the Secured Money of that Obligor; and
- (g) *Non-prejudice:* will not do, or permit to be done or occur, anything which prejudices or may prejudice any insurance.

9 ENFORCEMENT

9.1 Consequences of Event of Default

If an Event of Default occurs and remains continuing then (in addition to any other consequences provided for by this document or any other Loan Document):

- (a) *Security enforceable:* the security created under this document will become immediately enforceable;
- (b) *Secured Creditor's rights:* the Majority Lenders may take any action referred to in clause 11.02 of the Term Loan Agreement and the Secured Parties may (whether or not a Receiver has been appointed) exercise all or any rights which a Person would have if appointed as a Receiver under this document; and
- (c) *Appoint representative:* the Majority Lenders shall appoint one of the Secured Parties to act as a representative of all the Secured Parties (such Person being the *Secured Parties Representative*) to exercise, on behalf of the Secured Parties, the rights and remedies of the Secured Parties under this document.

10 RECEIVER

10.1 Appointment of Receiver

If:

- (a) an Event of Default has occurred and is continuing and has not been waived by the Secured Parties; or
- (b) the Obligor concerned so requests,

the Secured Parties may appoint any Person or Persons (whether jointly, severally or jointly and severally) to be a receiver, or receiver and manager, of all or any of the Secured Property of an Obligor. The Secured Parties may do this whether or not the



Secured Parties have exercised any other right and even if dissolution of that Obligor has already commenced. The Secured Parties may do this after the discontinuance of any earlier receivership.

10.2 **Additional rights**

At any time upon or following the appointment of any Receiver, the Secured Parties may:

- (a) determine, or vary, the terms of appointment of the Receiver;
- (b) require any Receiver to give it security or an indemnity for the due performance of the Receiver's duties;
- (c) remove any Receiver; and
- (d) appoint another Receiver in addition to, or in place of, any Receiver.

10.3 **Remuneration**

The Secured Parties may, subject to the Receiverships Act , determine or vary the remuneration of any Receiver. Such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by the Obligor concerned;
- (c) is included in the Secured Money of the Obligor concerned; and
- (d) will be secured by the security created under this document.

10.4 **Receiver agent of Obligor**

Every Receiver is the agent of the Obligor concerned, except where (but only to the extent that) the Receiver is required by notice from the Secured Parties to act as agent of the Secured Parties. The Secured Parties are not responsible for a Receiver's actions (including any misconduct, negligence or default of Receiver).

10.5 **Receiver's rights**

In addition to, and without limiting or affecting, any other rights granted to or conferred on a Receiver (whether under the Receiverships Act , at law or otherwise), and subject to the specific terms of appointment of each Receiver, each Receiver has the right in respect of the Secured Property and an Obligor's business to do anything (whether alone or with any other Person) that the Obligor concerned could do as if the Receiver had full legal and beneficial ownership of the Secured Property and carried on the Obligor's business for the Receiver's own benefit.

10.6 **Exercise of Receiver's rights**

Every Receiver will, to the fullest extent permitted by law, exercise its rights in compliance with any directions issued by the Secured Parties, and otherwise on such terms and conditions as the Receiver requires.

**10.7 Withdrawal**

The Secured Parties may at any time give up possession of any Secured Property or discontinue any receivership.

11 APPLICATION OF AMOUNTS**11.1 Order of application**

All amounts received or recovered, or applied, by the Secured Parties or any Receiver from the security created under this document will be applied in the manner and order determined by the Secured Parties or the Receiver. In the absence of any determination, those amounts will be applied in the order described in *clause 11.2*. This clause is subject to:

- (a) any claims ranking in priority to the security created under this document; and
- (b) any mandatory provisions of law (including, any mandatory provisions of the PLA and, in the case of any personal property, any mandatory provisions of the PPSA).

11.2 Order of application where no determination

Subject to *clause 11.1*, amounts received or recovered by the Secured Parties or any Receiver from the security created under this document will be applied in payment:

- (a) first, of all expenses incurred by the Secured Parties, the Receiver and any Attorney in the exercise, or attempted exercise, of rights under, or otherwise in connection with, any Transaction Document;
- (b) secondly, of the Receiver's remuneration;
- (c) thirdly, of all other Secured Money of the Obligor concerned;
- (d) fourthly, to each holder of a security of which the Secured Parties is aware and which ranks after the security created under this document in relation to the relevant Secured Property, to the extent, and in the order, of such priority; and
- (e) fifthly, of any surplus to the Obligor concerned (including for receipt on behalf of any other Persons who may be entitled to the same).

11.3 Amounts contingently owing

If, at the time of application of any amounts under *clause 11.1* or *clause 11.2*, any part of the Secured Money of an Obligor is contingently owing, or not yet due and payable, the Secured Parties or any Receiver:

- (a) may retain an amount equal to all or part of the amount of such Secured Money;
- (b) will place that retained amount in an interest bearing deposit account until such Secured Money becomes actually due and payable or ceases to be contingently owing;



- (c) will pay to the Secured Parties from the amount retained, all amounts which become actually due and payable after that time; and
- (d) will apply the balance of the amount retained, together with interest earned whilst on deposit, in accordance with *clause 11.1* and *clause 11.2*.

12 **PPSA**

12.1 **Waiver**

Without limiting any other provision of this document or any other Transaction Document, each Obligor:

- (a) waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any security interest created under any Transaction Document;
- (b) agrees that, at any time after an Event of Default has occurred and is continuing, the Secured Parties may:
 - (i) take possession of any personal property; and/or
 - (ii) dispose of any personal property in such manner and generally on such terms and conditions as the Secured Parties think desirable,

and otherwise do anything that Obligor could do in relation to the personal property.

12.2 **PPSA – Part 9 and additional rights**

Each Obligor and the Secured Parties agree that, to the extent permitted by law and in respect of each Transaction Document and each security interest created under a Transaction Document:

- (a) that Obligor and the Secured Parties contract out of sections 114(1)(a), 133 and 134 of the PPSA;
- (b) that Obligor and the Secured Parties contract out of that Obligor's rights to (and that Obligor waives its rights to):
 - (i) receive notice of the Secured Parties' proposal to retain personal property under section 120(2) of the PPSA;
 - (ii) object to the Secured Parties' proposal to retain any personal property under section 121 of the PPSA;
 - (iii) not have goods damaged when the Secured Parties (or any Person on behalf of the Secured Parties) removes an accession under section 125 of the PPSA;
 - (iv) receive notice of the removal of an accession under section 129 of the PPSA; and



- (v) apply to the Court for an order concerning the removal of an accession under section 131 of the PPSA.

12.3 **Obligor's right to redeem personal property**

After an Event of Default has occurred, an Obligor may redeem personal property if:

- (a) the Secured Parties:
 - (i) have not sold or agreed to sell that personal property; and
 - (ii) have not applied or taken, and are not deemed to have taken, that personal property in satisfaction of the Secured Obligations or Secured Money; and
- (b) all Secured Obligations of that Obligor have been finally performed and the Secured Parties are under no obligation to do anything which would give rise to further Secured Obligations of that Obligor.

An Obligor may only effect the redemption by tendering to the Secured Parties, in cleared funds, an amount equal to the Secured Money of that Obligor as at the date the amount is tendered.

12.4 **Other rights**

Where the Secured Parties have rights in addition to, or existing separately from, those in the PPSA, those rights will continue to apply and are not limited or excluded (or otherwise adversely affected) by any right provided by any Transaction Document or by law.

13 **POWER OF ATTORNEY**

Each Obligor irrevocably appoints each Secured Party, every officer of each Secured Party and every Receiver, separately, for valuable consideration and by way of security, to be the attorney of that Obligor with power to:

- (a) at that Obligor's expense, do anything that Obligor is obliged to do under this document and has failed to do;
- (b) do anything the Attorney thinks desirable to:
 - (i) protect or secure payment of the Secured Money or performance of the Secured Obligations; and
 - (ii) give effect to the rights conferred on the Secured Parties or any Receiver by this document, or by law or otherwise,

even if the Attorney has a conflict of duty or interest in doing so;

- (c) delegate its rights (including this right of delegation) to any Person for any period (and to revoke any such delegation); and



- (d) appoint any Person its agent for any period (and to revoke any such appointment).

Each Obligor agrees to ratify everything done by an Attorney, or by any delegate or agent of any Attorney, in accordance with this clause.

14 PROTECTIONS

14.1 Protection of Secured Parties and Receiver

Subject to any mandatory provisions of law, no Secured Party and no Receiver is:

- (a) obliged to enforce payment of the Secured Money or performance of the Secured Obligations;
- (b) liable to account as mortgagee in possession in respect of the Secured Property;
- (c) accountable for any proceeds of enforcement other than those proceeds actually received by it;
- (d) liable for any loss resulting from or consequential upon the exercise, attempted exercise, or non-exercise of any right; or
- (e) liable for any loss resulting from or consequential upon any of the other matters set out in this clause.

14.2 No marshalling or merger

The Secured Parties are not required to marshal, enforce, apply, appropriate, recover or exercise any security or other entitlement held by it or any assets which the Secured Parties hold or are entitled to receive. The Secured Parties' right to payment of any Secured Money (including under any negotiable instrument or other agreement) will not merge in an Obligor's obligation to pay that Secured Money under any Transaction Document.

14.3 Protection of third parties

No Person dealing with or entering into a transaction with the Secured Parties or any Receiver or Attorney of the Secured Parties or any Receiver, need enquire:

- (a) whether an Event of Default has occurred or is continuing or this document or the security created under it has become enforceable;
- (b) whether any Receiver or Attorney has been properly appointed;
- (c) as to the amount of the Secured Money or whether the Secured Money is due and payable;
- (d) whether any right was exercised or is exercisable;
- (e) as to the propriety or regularity of any transaction or dealing; or



- (f) as to the application of any amount paid to the Secured Parties or any Receiver, or to any Attorney.

15 INVESTIGATOR

15.1 Appointment of Investigator

If in the opinion of the Secured Parties (formed on reasonable grounds after consultation with the Borrower (where practicable), except that the occurrence of an Event of Default which is continuing shall constitute reasonable grounds):

- (a) the financial condition or business of an Obligor has, or the operations of an Obligor have, materially deteriorated, or is or are likely to materially deteriorate; or
- (b) the value of the Secured Property of an Obligor has materially diminished, or is likely to materially diminish,

the Secured Parties may appoint any Person or Persons holding either an audit licence or legal practising certificate (whether jointly, severally or jointly and severally) to act as an investigator of that Obligor. The Secured Parties may remove any Investigator and may appoint a new Investigator in addition to, or in place of, any Investigator.

15.2 Remuneration

The Secured Parties may determine or vary the remuneration of any Investigator. If an Investigator is appointed after an Event of Default has occurred and while that Event of Default is still continuing, such remuneration:

- (a) may be (or may include) a commission;
- (b) is payable by the Obligor concerned;
- (c) is included in the Secured Money of the Obligor concerned; and
- (d) will be secured by the security created under this document.

15.3 Secured Parties not Responsible

The Secured Parties are not responsible for an Investigator's actions (including any misconduct, negligence or default of an Investigator).

15.3 Investigator's Rights

An Investigator has the right to investigate the affairs of the Obligor concerned in such manner as the Investigator thinks fit, including the right to:

- (a) enter, without prior notice, upon any land owned or occupied by that Obligor;
- (b) make enquiries from any Person (including, without limitation, any director, officer, employee, professional advisor or business associate of that Obligor) regarding the financial condition, business, operations or other affairs of that Obligor; and



- (c) inspect and take copies of or extracts from any document relating to the financial condition, business, operations or other affairs of that Obligor, whether those documents are held by that Obligor, any professional advisor or any other Person.

15.4 **Obligor to assist Investigator**

Each Obligor shall do everything requested by the Investigator to enable the Investigator to exercise the rights of the Investigator.

16 **SET-OFF**

Upon the occurrence and continuation of an Event of Default, each Obligor authorises the Secured Parties to apply, without prior notice or demand, any amount owing or due by a Secured Party to that Obligor in or towards satisfaction of any of the Secured Money due by that Obligor to the Secured Party and unpaid. For this purpose, the Secured Parties are authorised to accelerate the date for payment of any amount owing by the Secured Party to that Obligor, and may convert one currency into another. The Secured Parties' rights under this clause will not limit and will be in addition to any right of set-off combination of accounts, lien or other right to which it is at any time otherwise entitled (whether by operation of law, agreement or otherwise).

17 **COSTS AND INDEMNITIES**

17.1 **Expenses**

Each Obligor agrees to pay to the Secured Parties, on demand:

- (a) the amount of all expenses reasonably incurred by the Secured Parties in connection with:
 - (i) the preparation, negotiation and execution of this document;
 - (ii) any amendment, waiver or consent in connection with this document; or
 - (iii) any release of this document or release of any Secured Property from the security created under it;
- (b) the amount of all expenses:
 - (i) reasonably incurred by the Secured Parties in connection with preparing, registering and maintaining any financing statement or financing change statement (including pursuant to section 167 of the PPSA); or
 - (ii) incurred by the Secured Parties in connection with complying with any demand made under section 162 of the PPSA; and
- (c) the amount of all expenses incurred by the Secured Parties in connection with the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation of any rights under this document, or in suing for or recovering any Secured Money or enforcing any Secured Obligation.



17.2 Stamp Duty

Each Obligor agrees to pay all stamp, documentary, transaction, registration and other similar taxes (if any) which may be payable in relation to this document or any supplemental deed as contemplated by *clause 3.1* (or in relation to the security created by this document or any supplemental deed), and agrees to indemnify and hold harmless the Secured Parties on demand for and against all expenses and liabilities in connection with such taxes.

17.3 Indemnities

Each Obligor agrees to indemnify and hold harmless each Secured Party, each Receiver and each Attorney on demand for and against all expenses, losses and liabilities incurred or sustained by such Secured Party, any Receiver or any Attorney (other than to the extent any such expense, loss or liability is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from gross negligence or wilful misconduct on the part of such Secured Party, Receiver or Attorney), in connection with:

- (a) the exercise, enforcement or preservation, or attempted exercise, enforcement or preservation of any rights under this document (including expenses and liabilities resulting from a mistake or error of judgment);
- (b) any enquiry by a Governmental Authority involving an Obligor or any transaction or activity with which the Secured Property, the Secured Money or Secured Obligations is or are connected; and
- (c) possession of, or any right or interest in, the Secured Property, or any liability, control or right relating to any Secured Property or an Obligor.

Each amount due under this indemnity is included in the Secured Money and will be secured by the security created under this document.

17.4 Control Agent

For the avoidance of doubt, any reference to expenses or liabilities of a Secured Party referred to in this *clause 17* includes any expense or liability incurred or sustained by the Control Agent as agent for the Secured Parties.

18 ASSIGNMENT

18.1 Assignment by Obligor

No Obligor may assign or otherwise dispose of, or declare a trust over or otherwise create an interest in, any of its rights under this document without the prior written consent of the Secured Parties.

18.2 Assignment by Secured Parties

As between each Obligor, on the one hand, and the Secured Parties, on the other, each Secured Party may assign its interest under this document to any party to which it assigns its rights and obligations under the Term Loan Agreement in accordance with clause 12.05 of that agreement.

**18.3 Accession by New Secured Party**

- (a) If a Secured Party, as a Lender under the Term Loan Agreement, assigns any of its rights and obligations under the Term Loan Agreement to any person in accordance with Section 12.05 of the Term Loan Agreement, such person (*New Secured Party*) may become a party to this document by executing a supplemental deed in (or substantially in) the form set out in Schedule 3.
- (b) As from the date of the supplemental deed:
 - (i) the New Secured Party becomes bound by this document and receives the benefit of a Secured Party under this document on the same basis as if it were a party to this document; and
 - (ii) the assigning or transferring Secured Party continues to be bound by this document unless it has assigned all of its rights, or novated all of its rights and obligations, to one or more Secured Parties (in which case such assigning or transferring Secured Party is released from any further obligations under this document, but without prejudice to any liability in respect of any default by such Secured Party arising before such assignment or transfer).

19 NOTICES

Each notice or other communication under this document shall be given in accordance with Section 12.02 of the Term Loan Agreement.

20 GENERAL**20.1 Rights**

The Secured Parties may take any action the Secured Parties think desirable to:

- (a) remedy any failure by an Obligor to comply with its obligations under this document; or
- (b) protect the security created under this document (including notifying an account debtor of any security or lodging any caveat in relation to any land).

However, this entitlement does not impose any obligation on the Secured Parties to take any such action, or affect any obligation of any Obligor under this document.

20.2 Indemnities Generally

Each indemnity in this document is a continuing obligation, separate and independent of other obligations under this document, and will survive termination of, or any release of or under, this document.

20.3 Discretions

Except to the extent otherwise expressly provided, the Secured Parties or any Receiver may act in its absolute and sole discretion when forming any opinion, exercising (or not exercising) any right, taking (or not taking) any action, giving or withholding consents or



releases, dealing with any other matter, or imposing any terms in respect of any such matter.

20.4 No limitation

The Secured Parties' rights under this document do not limit, and are in addition to, any other right to which any Secured Party is at any time entitled (whether under this document or by law, agreement or otherwise) and may be exercised by the Secured Parties without prior notice to any Obligor or any other Person.

20.5 Waiver

A waiver by the Secured Parties of any provision of this document will only be effective if it is given in writing and signed by the Secured Parties. A waiver will be effective only to the extent that it is expressly stated to be given. A failure to act, or a delay in exercising or attempting to exercise, or a non-exercise of, any right under this document or at law does not operate as a waiver of that right. A single exercise or partial exercise of any right does not preclude further exercises of that right or the exercise of any other right.

20.6 Certificates and determinations

Any certificate or determination by the Secured Parties as to any amount of Secured Money or fact which might reasonably be expected to be within the Secured Parties' knowledge will be, in the absence of manifest error, prima facie evidence of the matters to which it relates.

20.7 Immunity

Each Obligor waives any immunity (including from any proceeding and enforcement process) it may have in any jurisdiction.

20.8 Moratorium legislation

To the maximum extent permitted by law, all moratorium legislation is negated and excluded from application to this document, to the extent that it directly or indirectly

- (a) lessens, varies, or affects, in favour of any Obligor, any Secured Obligation; or
- (b) delays, prevents, or adversely affects the exercise of any right by the Secured Parties or any Receiver or Attorney.

20.9 Conflict of provisions

In the event of a conflict between a provision of this document:

- (a) and a provision of any other Transaction Document, the Secured Parties may, in their absolute discretion, determine which prevails;
- (b) and any mandatory provisions in any legislation, then this document will be modified to the extent necessary to comply with such mandatory provision.

20.10 Amendments

- (a) No amendment to this document will be effective unless it is in writing and signed by the Obligors and the Secured Parties.



- (b) For the purposes of facilitating the execution of any amendment to this document, and in consideration of the Secured Parties providing or continuing to or agreeing to provide any credit, advance or facility which, if provided, would constitute Secured Money, each Obligor hereby:
 - (i) irrevocably appoints the Borrower and any director of the Borrower acting severally to be its lawful attorney and to agree the terms and form of, and to execute on its behalf, any amendment to this document which may in the opinion of such attorney be necessary or desirable; and
 - (ii) agrees to ratify any action taken or agreement executed by such attorney pursuant to the power hereby conferred.

20.11 Obligations Joint and Several

The obligations of the Obligors under this document are joint and several. This document binds each of the Obligors which has signed it (or which has become party to this document by executing a supplemental deed) even though one or more of the named Obligors may never execute this document.

20.12 Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982, each Receiver and each Attorney is entitled to enforce against each Obligor each provision of this document which confers a benefit upon a Receiver or Attorney (as the case may be). However, none of them need consent to any amendment made to this document.

20.13 Partial invalidity

The illegality, invalidity, or unenforceability of any provision of this document under the law of any relevant jurisdiction will not affect the legality, validity or enforceability of that provision under any other law, or the legality, validity or enforceability of any other provision of this document.

20.14 Counterparts

This document may be signed in any number of counterparts all of which, when taken together, will constitute one and the same instrument. Once the parties have signed the counterparts, each counterpart shall be deemed to be as valid and binding on the party executing it as if it had been executed by all the parties.

20.15 Governing law

This document will be governed by New Zealand law.

20.16 New Zealand Courts

Each Obligor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand. Each Obligor waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

**20.17 Service**

Without prejudice to any other mode of service allowed under any relevant law, each Obligor agrees that any document in an action may be served on it:

- (a) by being delivered to or left for it at its address for service of notices under this document; or
- (b) where it has appointed the Borrower as its agent for service pursuant to *clause 20.18*, by being delivered to or left for the Borrower (as its process agent) at the Borrower's address for service of notices under this document.

20.18 Process Agent

Each Obligor which is not incorporated in New Zealand:

- (a) agrees to maintain an agent in New Zealand; and
- (b) hereby irrevocably appoints the Borrower as its agent in New Zealand,

for service of any document in relation to any proceedings before the New Zealand Courts in connection with this document. Each such Obligor agrees that any failure by the agent to notify it of any document served will not invalidate the proceedings concerned.

21 CONTROL AGENT**21.1 Appointment of Control Agent**

- (a) The Secured Parties each hereby appoint Capital Royalty Partners II L.P. as their collateral agent (in such capacity, together with any successor in such capacity appointed by Capital Royalty Partners II L.P. and consented to in writing by the Majority Lenders in accordance with the Term Loan Agreement (such consent not to be unreasonably withheld or delayed), the *Control Agent*) for the limited purpose of acting as the agent on behalf of the Secured Parties with respect to the Secured Property for purposes of (i) the perfecting of the security created in favour of the Secured Parties under this document and (ii) entering into any agreement or other instrument with any Obligor, its other creditors and/or any other person for the purposes of regulating the priority of the security created in favour of the Secured Parties under this document with any other security granted by an Obligor in respect of the same collateral (*a Priority Arrangement*) and (iii) entering into any accession deed in connection with this document (*an Accession Deed*).
- (b) The Control Agent accepts such appointment and agrees to (i) hold or to have control of, as applicable, the Secured Property and (ii) enter into any Priority Arrangement or Accession Deed in each case for the benefit of itself and the other Secured Parties and any permitted assignee of any thereof solely for the purpose of perfecting any security interest granted to such parties in such Secured Property, regulating the priority of any such security interest or completing accession formalities under this document (as the case may be), subject to the terms and conditions of this *clause 21*.
- (c) The Control Agent may perform any of its duties under this Agreement by or through its officers, directors, agents, employees, affiliates or other designees.

**21.2 Relationship with Secured Parties**

- (a) All Secured Parties hereby agree that the Control Agent shall have the sole and exclusive right and authority to give instructions to, and otherwise direct, the Obligors in respect of the Secured Property and no other Secured Party will hinder, delay or interfere with the exercise of such rights by the Control Agent in any respect.
- (b) Except as specifically prescribed herein, the Control Agent shall have no obligation whatsoever to the other Secured Parties including any obligation to assure that the Secured Property is genuine or owned by an Obligor or to preserve rights or benefits of any Person except as expressly set forth in this *clause 21*.
- (c) In acting on behalf of the other Secured Parties, the duties or responsibilities of the Control Agent under this *clause 21* shall be limited solely to (i) physically holding the Secured Property delivered to the Control Agent by the Obligor, and entering into any Collateral Security, control agreement or other agreement for the benefit of the Secured Parties, in each case, for purposes of perfecting the security held by the Secured Parties, (ii) entering into any Priority Arrangement for the benefit of the Secured Parties for purposes of giving effect to the priority arrangements agreed between the Secured Parties, the relevant Obligor/s and the relevant creditor/s or other person/s party to such arrangements and (iii) entering into any Accession Deed for the purposes of completing the accession formalities under this document.
- (d) The Control Agent shall not have by reason of any document including this document a fiduciary relationship in respect of any other Secured Party.

21.3 Indemnity

Each Obligor will indemnify and hold harmless the Control Agent for any claims or losses related to its acting in such role except to the extent due to the gross negligence or wilful misconduct of the Control Agent.



EXECUTED AS A DEED

Obligors

AFT Pharmaceuticals Limited by:

Director

Director

in the presence of:

Name:

Occupation:

Address:

Address for notices for the Obligors:

Level 1, 129 Hurstmere Road
Takapuna, Auckland 0622

Attn: Dr H Atkinson

Tel: +64-9-4880232

Fax: +64-9-4880234

Email: hartley@aftpharm.com



AFT Orphan Pharmaceuticals Limited by:

Director

Director

in the presence of:

Name:

Occupation:

Address:

Address for notices for the Obligors:

Level 1, 129 Hurstmere Road
Takapuna, Auckland 0622

Attn: Dr H Atkinson

Tel: +64-9-4880232

Fax: +64-9-4880234

Email: hartley@aftpharm.com



Secured Parties

CAPITAL ROYALTY PARTNERS II L.P.
By CAPITAL ROYALTY PARTNERS II
GP L.P., its General Partner
By CAPITAL ROYALTY PARTNERS
II GP LLC, its General Partner

By

Name: Charles Tate
Title: Sole Member

in the presence of:

Name:
Occupation:
Address:

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com



CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” L.P.

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP L.P., its
General Partner

By CAPITAL ROYALTY PARTNERS
II – PARALLEL FUND “A” GP LLC,
its General Partner

By

Name: Charles Tate
Title: Sole Member

in the presence of:

Name:
Occupation:
Address:

Address for Notices:

1000 Main Street, Suite 2500
Houston, TX 77002
Attn: General Counsel
Tel.: 713.209.7350
Fax: 713.209.7351
Email: adorenbaum@capitalroyalty.com



SCHEDULE 1: THE INITIAL OBLIGORS

AFT Orphan Pharmaceuticals Limited

**SCHEDULE 2: FORM OF SUPPLEMENTAL DEED (NEW OBLIGOR)**

Date:

PARTIES

[] (the *New Obligor*)

Capital Royalty Partners II L.P. (as collateral agent for itself and the other Secured Parties)

BACKGROUND

- A The New Obligor is a [Wholly Owned Subsidiary][subsidiary] (within the meaning of the Agreement referred to below) of AFT Pharmaceuticals Limited (the *Borrower*).
- B The Borrower and certain other companies entered into a General Security Agreement dated [date] 2014 (the *Agreement*) in favour of the Secured Parties.
- C The New Obligor wishes to execute this Supplemental Deed (being a deed supplemental to the Agreement) in order to become an Obligor as defined in the Agreement.

THE PARTIES AGREE as follows:**1 Definitions**

To the extent applicable, the definitions and provisions contained in *clause 1* of the Agreement apply to and are incorporated in this Supplemental Deed.

2 Accession

2.1 With effect from the date of this Supplemental Deed, the New Obligor:

- (a) agrees to become and does become, with effect from the date of this Supplemental Deed, an Obligor under the Agreement as if originally included in and named in the Agreement as an Obligor; and
- (b) agrees to be bound and is bound in such capacity, with effect from the date of this Supplemental Deed, by the terms of the Agreement,

so that (among other things) the New Obligor:

- (c) agrees that it will pay the Secured Money to the Secured Parties on the terms and at the times stipulated in the other Transaction Documents (or to the extent that there is no such stipulation, upon demand);
 - (d) agrees that it will perform or procure performance of the Secured Obligations in accordance with the Transaction Documents; and
- (ii) otherwise assumes and agrees to perform all of the obligations of an Obligor under the Agreement.

Exhibit G-36



- 2.2 To secure to the Secured Parties payment of its Secured Money and performance of its Secured Obligations, the New Obligor (on the terms set out in the Agreement):
- (a) grants to the Secured Parties a charge in and over its Secured Property;
 - (b) in addition to the security granted under paragraph (a), assigns by way of security to the Secured Parties all its Secured Property which constitutes present or future rights or choses in action; and
 - (c) in addition to the security granted under paragraph (a), agrees to mortgage to the Secured Parties all its Secured Property which constitutes present or future interests in any land.

This security is to be treated for the purposes of the Agreement as having been created under *clause 4.1* of the Agreement.

- 2.3 The New Obligor represents and warrants to the Secured Parties as an Obligor in terms of *clauses 7.1* and *7.2* of the Agreement (and as though each reference in those clauses to the Transaction Documents included this Supplemental Deed).

3 **Supplemental**

For the purposes of section 14 of the PLA, the New Obligor acknowledges that this Supplemental Deed is, and for all purposes shall be construed as, supplemental to the Agreement.

4 **Power Of Attorney**

For the purposes of facilitating the execution of any amendment to the Agreement, and in consideration of the Secured Parties providing or continuing to or agreeing to provide any credit, advance or facility which, if provided, would constitute Secured Money, the New Obligor hereby:

- (a) irrevocably appoints the Borrower and any director of the Borrower acting severally to be its lawful attorney and to agree the terms and form of, and to execute on its behalf, any amendment to the Agreement which may in the opinion of such attorney be necessary or desirable; and
- (b) agrees to ratify any action taken or agreement executed by such attorney pursuant to the power hereby conferred.

5 **Notice Address**

The initial address, facsimile number and Person or office holder (if any) of the New Obligor for the service of notices is:

[address]

Fax:

Attention:

6 **Governing Law**



This Supplemental Deed will be governed by New Zealand law. The New Obligor irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand. The New Obligor waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

7 Service

Without prejudice to any other mode of service allowed under any relevant law, the New Obligor agrees that any document in an action may be served on it:

- (a) by being delivered to or left for it at its address for service of notices under *clause 5* of this Supplemental Deed; or
- (b) where it has appointed the Borrower as its agent for service pursuant to *clause 8* of this Supplemental Deed, by being delivered to or left for the Borrower (as its process agent) at the Borrower's address for service of notices under the Agreement.

8 Process Agent

The New Obligor, if not incorporated in New Zealand:

- (c) agrees to maintain an agent in New Zealand; and
- (d) hereby irrevocably appoints the Borrower as its agent in New Zealand,

for service of any document in relation to any proceedings before the New Zealand Courts in connection with this Supplemental Deed or the Agreement. The New Obligor agrees that any failure by the agent to notify it of any document served will not invalidate the proceedings concerned.

9 Contracts (Privity) Act 1982

For the purposes of the Contracts (Privity) Act 1982, each Secured Party is entitled to enforce against the New Obligor each provision of this Supplemental Deed.

EXECUTED AS A DEED

[insert appropriate execution blocks]

**SCHEDULE 3: FORM OF SUPPLEMENTAL DEED (NEW SECURED PARTY)**

Date:

PARTIES

[] (the *New Secured Party*)

Capital Royalty Partners II L.P. (as collateral agent for itself and the other existing Secured Parties)

BACKGROUND

- A The Borrower and certain other companies entered into a General Security Agreement dated [date] 2014 (the *Agreement*) in favour of the original Secured Parties.
- B The New Secured Party wishes to execute this Supplemental Deed (being a deed supplemental to the Agreement) in order to become a Secured Party as defined in the Agreement.

THE PARTIES AGREE as follows:**1 Definitions**

To the extent applicable, the definitions and provisions contained in *clause 1* of the Agreement apply to and are incorporated in this Supplemental Deed.

2 Accession**2.1** With effect from the date of this Supplemental Deed:

- (a) the New Secured Party is taken to be a party to the Agreement;
- (b) the New Secured Party becomes bound by the Agreement as a Secured Party and receives the benefits of a Secured Party under the Agreement in accordance with *clause 18.3* of the Agreement;
- (c) each reference in the Agreement to "Senior Lender" includes a reference to the New Secured Party.

2.2 Without limiting *clause 2.1*, the New Secured Party appoints the Control Agent as its collateral agent subject to the terms of *clause 21* of the Agreement and *clause 2.3* of this Supplemental Deed. Capital Royalty Partners II L.P. accepts such appointment.**2.3** Without prejudice to any right of indemnity given to it by law or equity and in addition to, and without prejudice to, any other indemnity in any other Transaction Document, the Control Agent is entitled to be indemnified out of money from time to time received by the Secured Parties, any Receiver or the Control Agent in connection with Secured Property in respect of all liabilities and expenses incurred by the Control Agent in the exercise or purported exercise of its rights and obligations under the Agreement or any other



Transaction Document and all actions, proceedings, costs, claims and demands arising in relation to the Agreement or any other Transaction Document. If funds are not available from the Obligors and/or from enforcement against the Secured Property to satisfy such indemnity, then the New Secured Party severally in its Relevant Share indemnifies the Control Agent against that amount and must pay such amount to the Control Agent within three Business Days of demand. In this *clause 2.3*, the New Secured Party's *Relevant Share*, as at the date of demand, is the proportion the outstanding principal amount of the Loan owing to the New Secured Party at such time bears to the aggregate outstanding principal amount of the Loan owing to all Secured Parties at such time.

3 **Supplemental**

For the purposes of section 14 of the PLA, the New Secured Party acknowledges that this Supplemental Deed is, and for all purposes shall be construed as, supplemental to the Agreement.

4 **Notice Address**

The initial address, facsimile number and Person or office holder (if any) of the New Secured Party for the service of notices is:

[address]

Fax:

Attention:

5 **Governing Law**

This Supplemental Deed will be governed by New Zealand law. The New Secured Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand. The New Secured Party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

EXECUTED AS A DEED

[insert appropriate execution blocks]



SCHEDULE 4: INITIAL INVESTMENT SECURITIES

Borrower

65,000 ordinary shares in AFT Orphan Pharmaceuticals Limited

1,000 ordinary shares in AFT Pharmaceuticals Pty Ltd

100 ordinary shares in AFT Pharmaceuticals Singapore Pte Ltd

2 ordinary shares in AFT Pharmaceuticals (SE Asia) SND. BHD.



SCHEDULE 5: SERIAL-NUMBERED GOODS

Borrower

Serial numbered goods (including motor vehicle(s)/aircraft) that are equipment or consumer goods:

Motor vehicles

Complete if serial numbered goods consist of any motor vehicle(s) other than inventory:

make or name of manufacturer	model no.	model year	Registration no. (if any)	vehicle id. no. (if any)	chassis no. (if any)	colour
Lexus	LX570	2011	GBP349	JTJHY00W 30407101 9		
Hyundai	IX35	2013	GWF507	KMHJT81B MDU73550 5		Black
Hyundai	IX35	2013	GWF500	KMHJT81B MDU73545 2		Black

AMENDMENT 1 TO TERM LOAN AGREEMENT

THIS AMENDMENT 1, dated as of May 7, 2015 (this "**Amendment**"), effective as of June 30, 2014, is made among AFT Pharmaceuticals Limited, a New Zealand company ("**Borrower**"), the Subsidiary Guarantors, and the lenders listed on the signature pages hereof under the heading "LENDERS" (each a "**Lender**" and, collectively, the "**Lenders**"), with respect to the Loan Agreement referred to below.

RECITALS

WHEREAS, the Borrower and the Lenders are parties to a Term Loan Agreement, dated as of April 30, 2014 (the "**Loan Agreement**"), with the Subsidiary Guarantors from time to time party thereto.

WHEREAS, the parties hereto desire to amend the Loan Agreement on the terms and subject to the conditions set forth herein.

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

SECTION 1. Definitions; Interpretation.

(a) **Terms Defined in Loan Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

(b) **Interpretation.** The rules of interpretation set forth in **Section 1.03** of the Loan Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

SECTION 2. Amendment. Subject to **Section 3**, the Loan Agreement is hereby amended as follows:

(a) **Section 9.06(c)** thereof is hereby amended by deleting the word "and" at the end thereof.

(b) **Section 9.06(d)** thereof is hereby amended by replacing the "." At the end thereof with the phrase "; and".

(c) A new **Section 9.06(e)** is hereby added thereto, which shall read in its entirety as follows:

"(e) Borrower may declare and pay cash dividends with respect to Borrower's Series A Preferred Shares and Borrower's Series B Preferred Shares (in each case, in accordance with Borrower's constitution), so long as at the time of such declaration and payment, both immediately before and immediately after giving effect thereto, (i) no Default shall have

occurred and be continuing and (ii) the representations and warranties made by Borrower in **Section 7** are true (except that the representation regarding representations and warranties that refer to a specific earlier date shall be that they were true on such earlier date).”.

SECTION 3. Conditions of Effectiveness. The effectiveness of **Section 2** shall be subject to the following conditions precedent:

(a) The Obligors shall have paid or reimbursed Lenders for Lenders’ reasonable out of pocket costs and expenses incurred in connection with this Amendment, including Lenders’ reasonable out of pocket legal fees and costs, pursuant to **Section 12.03(a)(i)(z)** of the Loan Agreement.

(b) The representations and warranties in **Section 4** shall be true and correct on the date hereof and on the first date on which the condition set forth in **Section 3(a)** shall have been satisfied.

SECTION 4. Representations and Warranties; Reaffirmation.

(a) Each Obligor hereby represents and warrants to each Lender as follows:

(i) Such Obligor has full power, authority and legal right to make and perform this Amendment. This Amendment is within such Obligor’s corporate powers and has been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Amendment has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors’ rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). This Amendment (x) does not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for such as have been obtained or made and are in full force and effect, (y) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of such Obligor and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (z) will not violate or result in an event of default under any material indenture, agreement or other instrument binding upon such Obligor and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person.

(ii) No Default has occurred or is continuing or will result after giving effect to this Amendment.

(iii) The representations and warranties made by or with respect to such Obligor in **Section 7** of the Loan Agreement are true in all material respects (taking into account any changes made to schedules updated in accordance with **Section 7.20** of the Loan Agreement), except that such representations and warranties that refer to a specific earlier date were true in all material respects on such earlier date.

(iv) There has been no Material Adverse Effect since the date of the Loan Agreement.

(b) Each Obligor hereby ratifies, confirms, reaffirms, and acknowledges its obligations under the Loan Documents to which it is a party and agrees that the Loan Documents remain in full force and effect, undiminished by this Amendment, except as expressly provided herein. By executing this Amendment, each Obligor acknowledges that it has read, consulted with its attorneys regarding, and understands, this Amendment.

SECTION 5. GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **Governing Law.** This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

(b) **Submission to Jurisdiction.** Each Obligor agrees that any suit, action or proceeding with respect to this Amendment or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This **Section 5** is for the benefit of the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, the Lenders may take concurrent proceedings in any number of jurisdictions.

(c) **Waiver of Jury Trial.** EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 6. Acknowledgement and Consent. Each Subsidiary Guarantor has read this Amendment and consents to the terms hereof and hereby acknowledges and agrees that any Loan Document to which such Person is a party shall continue in full force and effect and that all of its obligations thereunder shall be valid, binding, and enforceable, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles relating to enforceability, and shall not be impaired or limited by the execution or effectiveness of this Amendment. Each Subsidiary Guarantor represents and warrants that all representations and warranties contained in the Loan Agreement as amended by this Amendment, and the Loan Documents to which such Person is a party or otherwise bound are true, correct and complete in all material respects on and as of the date hereof with the same effect as though each had been made on and as of such date, except to the extent that any of such representations and warranties specifically relates to an earlier date. Each Subsidiary Guarantor acknowledges and agrees that (i) such Person is not required by the terms of the Loan Agreement or any other Loan Document to consent to the supplements and amendments to the Loan Agreement effected pursuant to this Amendment and

(ii) nothing in the Loan Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Person to any future supplements or amendments to the Loan Agreement.

SECTION 7. Miscellaneous.

(a) **No Waiver.** Nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Loan Agreement or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, the Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as amended hereby, the Loan Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Loan Agreement shall be deemed to be references to the Loan Agreement as amended hereby.

(b) **Severability.** In case any provision of or obligation under this Amendment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(c) **Headings.** Headings and captions used in this Amendment (including the Exhibits, Schedules and Annexes hereto, if any) are included for convenience of reference only and shall not be given any substantive effect.

(d) **Integration.** This Amendment constitutes a Loan Document and, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

(e) **Counterparts.** This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Amendment by signing any such counterpart.

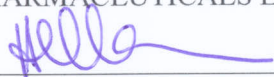
(f) **Controlling Provisions.** In the event of any inconsistencies between the provisions of this Amendment and the provisions of any other Loan Document, the provisions of this Amendment shall govern and prevail. Except as expressly modified by this Amendment, the Loan Documents shall not be modified and shall remain in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

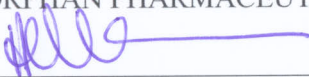
BORROWER:

AFT PHARMACEUTICALS LIMITED

By 
Hartley Atkinson
Managing Director

SUBSIDIARY GUARANTORS:

AFT ORPHAN PHARMACEUTICALS LIMITED

By 
Hartley Atkinson
Managing Director

AFT PHARMACEUTICALS PTY LTD

By 
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Managing Director

AFT PHARMACEUTICALS SINGAPORE PTE.
LTD.

By 
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AFT PHARMACEUTICALS (SE ASIA) SND.
BHD.


By 
Hartley Atkinson
Managing Director

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP
L.P., its General Partner


By CAPITAL ROYALTY PARTNERS II
GP LLC, its General Partner

X By 
Charles Tate
Sole Member

CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” L.P.

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP L.P., its General
Partner


By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “A” GP LLC, its
General Partner

X By 
Charles Tate
Sole Member

CAPITAL ROYALTY PARTNERS II (CAYMAN)
L.P.

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP L.P., its General Partner


By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

X By 
Charles Tate
Sole Member

CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND “B” (CAYMAN) L.P.

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LP, its General Partner

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

X By 
Charles Tate
Sole Member

AMENDMENT 2 TO TERM LOAN AGREEMENT

THIS AMENDMENT 2, dated as of September 30, 2015 (this "*Amendment*"), effective as of June 11, 2015, is made among AFT Pharmaceuticals Limited, a New Zealand company ("*Borrower*"), the Subsidiary Guarantors, and the lenders listed on the signature pages hereof under the heading "LENDERS" (each a "*Lender*" and, collectively, the "*Lenders*"), with respect to the Loan Agreement referred to below.

RECITALS

WHEREAS, the Borrower and the Lenders are parties to a Term Loan Agreement, dated as of April 30, 2014 (as amended on May 7, 2015, the "*Loan Agreement*"), with the Subsidiary Guarantors from time to time party thereto.

WHEREAS, the parties hereto desire to amend the Loan Agreement on the terms and subject to the conditions set forth herein.

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

SECTION 1. Definitions; Interpretation.

(a) **Terms Defined in Loan Agreement.** All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement.

(b) **Interpretation.** The rules of interpretation set forth in Section 1.03 of the Loan Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

SECTION 2. Amendment. Subject to Section 5, the Loan Agreement is hereby amended as follows:

(a) Each of Sections 8.02(c)(B)(2), 8.02(d) and 8.02(f)(ii) is hereby amended by replacing the phrase "Borrower or any of its Subsidiaries" each time it appears therein, with the phrase "any Obligor or any of its Subsidiaries".

(b) Section 8.02(e) is hereby amended by replacing the phrase "Borrower or any of its Affiliates" each time it appears therein, with the phrase "any Obligor or any of its Affiliates".

(c) Each of Section 8.02(j), 8.02(l) and 8.04 is hereby amended by replacing the phrase "Borrower or any Subsidiary" each time it appears therein, with the phrase "any Obligor or any of its Subsidiaries".

(d) Each of Sections 8.03, 8.04, 8.05, 8.06 and 8.07 is hereby amended by replacing the phrase "Borrower will, and will cause each of its Subsidiaries to," each time it appears therein, with the phrase "Each Obligor will, and will cause each of its Subsidiaries to,".

(e) Each of Sections 8.08(a), 8.09 and 8.10 is hereby amended by replacing the phrase "Borrower shall, and shall cause each of its Subsidiaries to," therein, with the phrase "Each Obligor will, and will cause each of its Subsidiaries to,".

(f) Section 8.13 is hereby amended by replacing the phrase "Borrower or any of its Subsidiaries" each time it appears therein, with the phrase "any Obligor or any of its Subsidiaries".

(g) Each of Sections 9.01, 9.02, 9.03, 9.04, 9.05, 9.06, 9.07, 9.08, 9.09, 9.10, 9.11, 9.12, 9.13, 9.14, 9.15 and 9.16 is hereby amended by replacing the phrase "Borrower will not, and will not permit any of its Subsidiaries to," therein, with the phrase "Each Obligor will not, and will not permit any of its Subsidiaries to,".

(h) Section 9.05(e) is hereby amended and restated to read in its entirety as follows:

"(e) Investments by Borrower and the Subsidiary Guarantors in (i) Subsidiary Guarantors (for greater certainty, Borrower shall not be permitted to have any direct or indirect subsidiaries that are not wholly-owned, other than AFT Orphan, and any Obligor) and (ii) other entities specifically consented to in writing by the Lenders".

(i) Section 10.02 is hereby amended and restated to read in its entirety as follows:

"10.02 Minimum Revenue. Borrower and its Subsidiaries shall have annual Revenue (for each respective fiscal year, the "*Minimum Required Revenue*"):

(a) during the twelve month period ending on March 31, 2016, of at least NZ\$64,500,000;

(b) during the twelve month period ending on March 31, 2017, of at least NZ\$73,500,000;

(c) during the twelve month period ending on March 31, 2018, of at least NZ\$84,000,000; and

(d) during the twelve month period ending on March 31, 2019, of at least NZ\$96,000,000."

SECTION 3. Consent. Subject to Section 5, each Lender consents to:

(a) the acquisition, by AFT Limited Partner Limited, a New Zealand company (the "*New Obligor*") of a 50% partnership interest in Dermatology Specialties, L.P., a New Zealand limited partnership (the "*JV*");

(b) the acquisition, by the New Obligor of a 50% shareholding in DSGP Limited, a New Zealand limited liability company and the general partner of the JV (the "*GP*"); and

(c) the Investment by New Obligor of up to \$3,000,000 (in the aggregate from time to time over the term of the Obligations) in the JV and any amounts necessary to effectuate the transactions specified in Sections 3(a) or 3(b), in the form of cash capital contributions or the transfer of assets.

SECTION 4. Conditions of Effectiveness. The effectiveness of Sections 2 and 3 shall be subject to the following conditions precedent:

(a) The Obligors shall have paid or reimbursed Lenders for Lenders' reasonable out of pocket costs and expenses incurred in connection with this Amendment, including Lenders' reasonable out of pocket legal fees and costs, pursuant to Section 12.03(a)(i)(z) of the Loan Agreement.

(b) The representations and warranties in Section 6 shall be true and correct on the date hereof and on the first date on which the condition set forth in Section 5(a) shall have been satisfied.

SECTION 5. Representations and Warranties; Reaffirmation.

(a) Each Obligor hereby represents and warrants to each Lender as follows:

(i) Such Obligor has full power, authority and legal right to make and perform this Amendment. This Amendment is within such Obligor's corporate powers and has been duly authorized by all necessary corporate and, if required, by all necessary shareholder action. This Amendment has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, enforceable against such Obligor in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws of general applicability affecting the enforcement of creditors' rights and (b) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law). This Amendment (x) does not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any third party, except for such as have been obtained or made and are in full force and effect, (y) will not violate any applicable law or regulation or the charter, bylaws or other organizational documents of such Obligor and its Subsidiaries or any order of any Governmental Authority, other than any such violations that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, (z) will not violate or result in an event of default under any material indenture, agreement or other instrument binding upon such Obligor and its Subsidiaries or assets, or give rise to a right thereunder to require any payment to be made by any such Person.

(ii) No Default has occurred or is continuing or will result after giving effect to this Amendment.

(iii) The representations and warranties made by or with respect to such Obligor in Section 7 of the Loan Agreement are true in all material respects (taking into account any changes made to schedules updated in accordance with Section 7.20 of the Loan Agreement), except that such representations and warranties that refer to a specific earlier date were true in all material respects on such earlier date.

(iv) There has been no Material Adverse Effect since the date of the Loan Agreement.

(b) Each Obligor hereby ratifies, confirms, reaffirms, and acknowledges its obligations under the Loan Documents to which it is a party and agrees that the Loan Documents remain in full force and effect, undiminished by this Amendment, except as expressly provided herein. By executing this Amendment, each Obligor acknowledges that it has read, consulted with its attorneys regarding, and understands, this Amendment.

SECTION 6. GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **Governing Law.** This Amendment and the rights and obligations of the parties hereunder shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws that would result in the application of the laws of any other jurisdiction; *provided that* Section 5-1401 of the New York General Obligations Law shall apply.

(b) **Submission to Jurisdiction.** Each Obligor agrees that any suit, action or proceeding with respect to this Amendment or any other Loan Document to which it is a party or any judgment entered by any court in respect thereof may be brought initially in the federal or state courts in Houston, Texas or in the courts of its own corporate domicile and irrevocably submits to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment. This Section 7 is for the benefit of the Lenders only and, as a result, no Lender shall be prevented from taking proceedings in any other courts with jurisdiction. To the extent allowed by applicable Laws, the Lenders may take concurrent proceedings in any number of jurisdictions.

(c) **Waiver of Jury Trial.** EACH OBLIGOR AND EACH LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AMENDMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

SECTION 7. Acknowledgement and Consent. Each Subsidiary Guarantor has read this Amendment and consents to the terms hereof and hereby acknowledges and agrees that any Loan Document to which such Person is a party shall continue in full force and effect and that all of its obligations thereunder shall be valid, binding, and enforceable, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles relating to enforceability, and shall not be impaired or limited by the execution or effectiveness of this Amendment. Each Subsidiary Guarantor represents and warrants that all representations and warranties contained in the Loan Agreement as amended by this Amendment, and the Loan Documents to which such Person is a party or otherwise bound are true, correct and complete in all material respects on and as of the date hereof with the same effect as though each had been made on and as of such date, except to the extent that any of such representations and warranties specifically relates to an earlier date. Each Subsidiary Guarantor acknowledges and agrees that (i) such Person is not required by the terms of the Loan Agreement or any other Loan Document to consent to the supplements and amendments to the Loan Agreement effected pursuant to this Amendment and

(ii) nothing in the Loan Agreement, this Amendment or any other Loan Document shall be deemed to require the consent of such Person to any future supplements or amendments to the Loan Agreement.

SECTION 8. Miscellaneous.

(a) **No Waiver.** Nothing contained herein shall be deemed to constitute a waiver of compliance with any term or condition contained in the Loan Agreement or any of the other Loan Documents or constitute a course of conduct or dealing among the parties. Except as expressly stated herein, the Lenders reserve all rights, privileges and remedies under the Loan Documents. Except as amended hereby, the Loan Agreement and other Loan Documents remain unmodified and in full force and effect. All references in the Loan Documents to the Loan Agreement shall be deemed to be references to the Loan Agreement as amended hereby.

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(c) **Headings.** Headings and captions used in this Amendment (including the Exhibits, Schedules and Annexes hereto, if any) are included for convenience of reference only and shall not be given any substantive effect.

(d) **Integration.** This Amendment constitutes a Loan Document and, together with the other Loan Documents, incorporates all negotiations of the parties hereto with respect to the subject matter hereof and is the final expression and agreement of the parties hereto with respect to the subject matter hereof.

(e) **Counterparts.** This Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Amendment by signing any such counterpart.

(f) **Controlling Provisions.** In the event of any inconsistencies between the provisions of this Amendment and the provisions of any other Loan Document, the provisions of this Amendment shall govern and prevail. Except as expressly modified by this Amendment, the Loan Documents shall not be modified and shall remain in full force and effect.


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IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

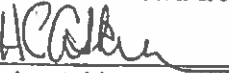
BORROWER:

AFT PHARMACEUTICALS LIMITED


By 
Hartley Atkinson
Managing Director

SUBSIDIARY GUARANTORS:


AFT ORPHAN PHARMACEUTICALS LIMITED

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Managing Director


AFT PHARMACEUTICALS PTY LTD

By 
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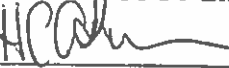
AFT PHARMACEUTICALS SINGAPORE PTE.
LTD.

By 
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Managing Director

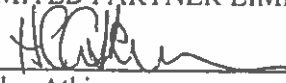
AFT PHARMACEUTICALS (SE ASIA) SND.
BHD.

By 
Hartley Atkinson
Managing Director

AFT DERMATOLOGY LIMITED

By 
Hartley Atkinson
Managing Director

AFT LIMITED PARTNER LIMITED

By 
Hartley Atkinson
Managing Director

LENDERS:

CAPITAL ROYALTY PARTNERS II L.P.

By CAPITAL ROYALTY PARTNERS II GP
L.P., its General Partner

By CAPITAL ROYALTY PARTNERS II
GP LLC, its General Partner

By Charles W. Tate
Charles Tate
Sole Member

CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND "A" L.P.

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND "A" GP L.P., its General
Partner

By CAPITAL ROYALTY PARTNERS II –
PARALLEL FUND "A" GP LLC, its
General Partner

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By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LP, its General Partner

By CAPITAL ROYALTY PARTNERS II
(CAYMAN) GP LLC, its General Partner

By Charles W. Tate
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Sole Member

[Handwritten signature]